

## Source: Civil Litigation/Preparing for Trial (Action Guide)/Introductory Material

### Preparing for Trial

Maureen E. McClain  
Jeffrey D. Polsky

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#### Scope of Guide

This Action Guide describes each step you need to prepare for trial, from the initial case management conference, through discovery, arbitration, and exchange of expert witness information, to last-minute motions. The guide includes sample trial preparation systems and checklists of deadlines to help you organize your case for trial.

### Abbreviations

Civil Discovery	<u><a href="#">California Civil Discovery Practice (4th ed Cal CEB 2006)</a></u>
Civ Proc Before Trial	<u><a href="#">California Civil Procedure Before Trial (4th ed Cal CEB 2004)</a></u>
Civ Proc During Trial	<u><a href="#">California Trial Practice: Civil Procedure During Trial (3d ed Cal CEB 1995)</a></u>
Effective Intro of Evidence	<u><a href="#">Effective Introduction of Evidence in California (2d ed Cal CEB 2000)</a></u>
Handling Expert Witnesses	<u><a href="#">Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2006)</a></u>
Laying a Foundation	<u><a href="#">Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial) (Cal CEB Action Guide April 2008)</a></u>
Trial Objections	<u><a href="#">California Trial Objections (Cal CEB Annual)</a></u>
Obtaining Discovery	<u><a href="#">Obtaining Discovery: Initiating and Responding to Discovery Procedures (Cal CEB Action Guide March 2007)</a></u>
TCDRA	<u><a href="#">Trial Court Delay Reduction Act (Govt C §§68600-68620)</a></u>

#### About the Authors

**Maureen E. McClain** is a senior partner in the San Francisco office of Kauff, McClain & McGuire, a management-side labor and employment firm with offices in San Francisco, New York, and Los Angeles. She practices primarily in union and employee matters, including litigation concerning employment disputes under federal and state law. Ms. McClain received her J.D. from Stanford Law School in 1974. She is a frequent lecturer in the fields of civil litigation and employment law, and author of *Employment Termination Law: A Practical Guide for Employers* (Cal CEB Handbook 1995), and the chapter on "Trial: Defendant's Perspective" in [Wrongful Employment Termination Practice \(2d ed Cal CEB 1997\)](#). She also acted as a consultant on [Handling a Wrongful Termination Action \(Cal CEB Action Guide Winter 1995\)](#).

**Jeffrey D. Polsky** is a partner in the San Francisco office of Kauff, McClain & McGuire, a management-side labor and employment firm with offices in San Francisco, New York, and Los Angeles. He represents employers and managers in disputes relating to claims of discrimination and harassment, wrongful discharge, trade secrets violations, and wage and hour compliance. He received his J.D. from Hastings College of the Law in 1985. Mr. Polsky speaks and writes frequently on employment law and litigation and has authored or contributed to a number of CEB publications, including *Bringing and Defending a Sexual Harassment Action* (Cal CEB Action Guide March 2006); *Employment Termination Law: A Practical Guide for Employers* (Cal CEB Handbook 1997); [California Trial Practice: Civil Procedure During Trial \(3d ed Cal CEB 1995\)](#); [Laying a Foundation to Introduce Evidence \(Preparing and Using Evidence at Trial\) \(Cal CEB Action Guide April 2006\)](#); and [Handling a Wrongful Termination Action \(Cal CEB Action Guide Winter 2004\)](#).

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 1. CONSIDER EFFECT OF TRIAL COURT DELAY REDUCTION ACT ON YOUR CASE

Before Case Management Conference

STEP 1. CONSIDER EFFECT OF TRIAL COURT DELAY REDUCTION ACT ON YOUR CASE

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

All "general civil cases" filed in California trial courts are subject to the Trial Court Delay Reduction Act (Govt C §§68600-68620), referred to throughout this Action Guide as TCDRA. See Govt C §§68605.5, 68608; Cal Rules of Ct 3.712; Cal Rules of Ct, Standards of J Admin 2.2.

Check Local Rules

Each trial court is responsible for adopting local rules to achieve timely resolution of cases as provided in statewide case management rules, which can be found in Cal Rules of Ct 3.700-3.735, and Cal Rules of Ct, Standards of J Admin 2.1. Cal Rules of Ct 3.711. See, *e.g.*, San Francisco Ct R 3.0-3.8.

NOTE

Make sure that you check the most recent version of the local rules where your case is proceeding to trial, because many counties have modified their TCDRA procedures to address changes made in the statewide court rules.

DETERMINE WHETHER YOUR CASE IS EXCEPTED FROM TCDRA

Types of Cases Not Subject to TCDRA

To determine whether your case is excepted from TCDRA, see Govt C §§68605.5, 68608(a); Cal Rules of Ct 3.712. TCDRA applies to "all general civil cases," which means all civil cases, except:

- a. Probate actions;
- b. Guardianship and conservatorship proceedings;
- c. Family law cases (see Fam C §§1-20043), including domestic relations proceedings under the Family Law Act, Uniform Parentage Act, and Uniform Child Custody Jurisdiction Act, emancipation of minors and freedom from parental custody and control actions, and adoption proceedings;
- d. Juvenile court cases;
- e. Small claims proceedings;
- f. Unlawful detainer actions; 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;
  - (5) Release of property from lien; and
  - (6) Name change.

Uninsured Motorist Cases

In uninsured motorist cases:

a. Each court and the Judicial Council must adopt rules to allow arbitration of uninsured motorist cases in which (Govt C §68609.5):

- (1) An action is filed against a defendant who is an uninsured motorist; and
- (2) Plaintiff's claim is subject to an arbitration provision;

b. The differential case management rules (Cal Rules of Ct 3.710-3.715) do not apply to a case designated as "uninsured motorist" by the court until 180 days after the designation to allow for arbitration of plaintiff's claim. Cal Rules of Ct 3.712(b).

Coordinated Cases

In any case included in a petition for coordination (Cal Rules of Ct 3.712(c)):

- a. Court rules for reducing trial delay do not apply; and
- b. If the petition is granted, the coordination trial judge may establish a case progression plan for the cases.

## REVIEW COURT'S CASE DISPOSITION TIME GOALS

In implementing TCDRA, each trial court must adopt local rules for differential case management as provided in Cal Rules of Ct 3.710-3.715. Cal Rules of Ct 3.711. See Cal Rules of Ct, Standards of J Admin 2.2.

Unlimited Civil Cases

For unlimited civil cases, the trial court's goal for cases assigned to the case management program for review under Cal Rules of Ct 3.720-3.730 is to manage them from date of filing so that (Cal Rules of Ct 3.714(b)(1)):

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

Limited Civil Cases

For limited civil cases, the trial court's goal for managing cases assigned to the case management program for review under Cal Rules of Ct 3.720-3.730 is to manage them from date of filing so that (Cal Rules of Ct 3.714(b)(2)):

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

NOTE

Based on their case disposition time goals, the trial courts expect the great majority of general civil cases to reach final disposition within 12 months of the date that the complaint was filed.

## UNDERSTAND JUDGES' ROLE

Responsibilities of Presiding Judge

The presiding judge must take an active role in formulating and implementing local rules and procedures to accomplish (Cal Rules of Ct, Standards of J Admin 2.1(c)):

- a. The expeditious resolution of cases, after full and careful consideration consistent with the ends of justice;
- b. The identification and elimination of any local rules, forms, practices, and procedures that:
  - (1) Are obstacles to reducing delay;

- (2) Are inconsistent with statewide case management rules; or
- (3) Prevent the court from effectively managing its cases;
- c. The formulation and implementation of a system for tracking cases from filing to disposition; and
- d. The training of judges and nonjudicial administrative personnel in delay reduction rules and procedures adopted in the local jurisdiction.

#### NOTE

For a case flow management system, internal operation procedures, and calendaring functions that each trial court must maintain, see Cal Rules of Ct 10.900-10.901.

#### Responsibilities of Trial Judge

The general principles guiding judges in their efforts to implement TCDRA are (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:* The court should control the pace of litigation to enable the just and effective resolution of cases; a strong judicial commitment is essential to reducing delay and maintaining a current docket. See also Cal Rules of Ct 3.713(c).

#### Individualized Case Management on Merits

Judges are obliged to (see Cal Rules of Ct 3.714(b)(3), Cal Rules of Ct, Standards of J Admin 2.1):

- a. Achieve the time goals listed above for disposition of all cases filed in that trial court; and
- b. Manage individual cases so that each case receives consideration on its merits, with a trial date set as soon as appropriate to enable a fair and efficient resolution. See also Cal Rules of Ct 3.729.

#### Trial Dates Are Firm and Continuances Disfavored

- a. All parties, counsel, and judges must regard the date set for trial as certain. Cal Rules of Ct 3.1332(a); Govt C §68607(f).
- b. Trial continuances are disfavored. Cal Rules of Ct 3.1332(c); Govt C §68607(g).

#### Grounds for Continuance

Although trial continuances are disfavored, the judge must consider each request on its own merits. Cal Rules of Ct 3.1332(c). See Hernandez v Superior Court (2004) 115 CA4th 1242, 1247, 9 CR3d 821 (continuance that is too brief may be abuse of court's discretion).

**Examples:** Good cause for granting continuance of the trial date includes death or serious illness of party's trial counsel (*Hernandez v Superior Court, supra*); trial counsel's unexpected conflicting trial dates (*Oliveros v County of Los Angeles (2004) 120 CA4th 1389, 16 CR3d 638*); and, in appropriate cases, need for further discovery when new party has been added (Cal Rules of Ct 3.1332(c)(5)), or party's "excused inability" to obtain essential evidence despite "diligent efforts" (Cal Rules of Ct 3.1332(c)(6)).

#### NOTE

For a list that includes additional grounds for continuance, see Cal Rules of Ct 3.1332(c). For other factors that a judge must consider in determining whether to continue trial date, see Cal Rules of Ct 3.1332(d).

#### Procedures for Requesting Continuance

Party seeking continuance must make request by noticed motion or ex parte application (Cal Rules of Ct 3.1332(b)):

- a. As soon as reasonably practical after discovering need for continuance; and
- b. Regardless of whether request for continuance is contested or uncontested, or stipulated to by the parties.

**Further Research:** For detailed discussion of requirements for making noticed motions and ex parte applications, see California Civil Procedure Before Trial, chaps 12-13 (4th ed Cal CEB 2004), referred to throughout this Action Guide as Civ Proc Before Trial.

## ASCERTAIN DISPOSITION GOAL FOR YOUR CASE

Investigate procedures court has adopted, after its evaluation of case under Cal Rules of Ct 3.715, for notifying parties of its decision to (Cal Rules of Ct 3.714(a)):

- a. Assign case to the case management program under Cal Rules of Ct 3.720-3.730, with a disposition time goal as provided in Cal Rules of Ct 3.714(b);
- b. Exempt case as an exceptional case under Cal Rules of Ct 3.714(c), with a disposition goal of within 3 years after filing (see, *e.g.*, Los Angeles Ct R 7.6(c)(3)); or
- c. Adopt a local management plan for expedited disposition within 6 to 9 months after filing. See local rules implementing Cal Rules of Ct 3.714(d).

## Factors Court Uses to Evaluate Disposition Time

In estimating the maximum time reasonably required to dispose of each case in a just and effective manner, the court must consider (Cal Rules of Ct 3.715):

- a. Any information it deems relevant, understanding that no one factor is controlling and that cases may have unique characteristics incapable of precise definition; and
- b. The factors enumerated in Cal Rules of Ct 3.715, which are:
  - (1) Type and subject matter of the action;
  - (2) Number of causes of action or affirmative defenses alleged;
  - (3) Number of parties with separate interests;
  - (4) Number of cross-complaints and the subject matter;
  - (5) Complexity of issues, including issues of first impression;
  - (6) Difficulty in identifying, locating, and serving parties;
  - (7) Nature and extent of discovery anticipated;
  - (8) Number and location of percipient and expert witnesses;
  - (9) Estimated length of trial;
  - (10) Whether some or all issues can be arbitrated;
  - (11) Statutory priority for the issues;
  - (12) Likelihood of review by writ or appeal;
  - (13) Amount in controversy and type of remedy sought, including measures of damages;
  - (14) Pendency of other actions or proceedings that may affect the case;
  - (15) Nature and extent of law and motion proceedings anticipated;
  - (16) Nature and extent of injuries and damages;
  - (17) Pendency of underinsured claims; and
  - (18) Any other factor that would affect the time for disposition of the case.

## NOTE

Counsel should check local rules that may list additional factors the court considers relevant to its evaluation of cases for disposition, and review Cal Rules of Ct 3.715 for any amendments made after publication of this Action Guide.

### Exceptional Cases Exempt from Disposition Time Goals

When exempting an exceptional case from the case disposition time goals under Cal Rules of Ct 3.713(b), the court must (Cal Rules of Ct 3.714(c)):

- a. Consider the case evaluation factors enumerated under Cal Rules of Ct 3.715; and
- b. Establish a case progression plan to ensure timely disposition within 3 years of the date the complaint was filed.

### Expedited Cases Assigned to Local Management Plan

A court that has adopted local rules for disposing of appropriate cases within 6 to 9 months after filing must (Cal Rules of Ct 3.714(d)):

- a. Establish a procedure for identifying cases to be assigned to the local case management plan for expedited case disposition; and
- b. Use the plan only for uncomplicated cases amenable to early disposition without need for a case management conference or other similar guidance.

## UNDERSTAND EFFECT OF TCDRA ON LOCAL RULES

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

### Trial Courts Cannot Shorten TCDRA Time Periods

Contrary to Govt C §68616, some courts have had rules with time periods shorter than those set forth in the statute. See If Local Rule Violates Govt C §68616, below.

### Serving Complaint

Local rule cannot require that you serve the complaint sooner than **60 days** after filing. Govt C §68616(a). But later periods of time:

- a. May be authorized by local rule; and
- b. Must be granted on a showing that service could not reasonably be achieved within the time required with the exercise of due diligence consistent with the amount in controversy.

### Responding to Complaint

Local rules (Govt C §68616(b)):

- a. Cannot require that defendant serve responsive pleadings sooner than **30 days** after service of complaint;
- b. Cannot prevent the parties from stipulating to an additional **15 days** (for a total of **45 days**) for the defendant to serve responsive pleadings after service of the complaint; and
- c. May authorize exceptions to be granted for longer periods of time to serve responsive pleadings.

### Serving Other Documents

Local rules (Govt C §68616(c)):

- a. Cannot require a shorter period for serving documents than that set by statute, *e.g.*, time for service of notice of motion under CCP §1005(b) or other paper under CCP §1013; and
- b. May authorize exceptions to be granted for longer periods of time to serve responsive pleadings.

## After Responsive Pleadings Served

Within **30 days** after service of the responsive pleadings, local rules may allow parties to stipulate to a single continuance of up to **30 days**. Govt C §68616(d).

## Court Conference

Court cannot schedule a status conference, or similar event, other than a challenge to the court's jurisdiction, sooner than **30 days** after either (Govt C §68616(e)):

- a. Service of the first responsive pleadings; or
- b. Expiration of the single stipulated continuance under Govt C §68616(d), as described above.

## NOTE

Court may schedule a status conference sooner than 30 days if case is a "complex case" as defined in Cal Rules of Ct 3.400. Govt C §68616(e).

## Discovery

Local rules cannot require shorter deadlines for discovery than those set by the discovery statutes. Govt C §68616(f); CCP §§2016.010-2036.050.

## Setting for Arbitration

- a. Court cannot order case to judicial arbitration (Govt C §68616(g)) sooner than **210 days** after complaint was filed; but
- b. The time period of any continuance the parties may have agreed to under Govt C §68616(d) is excluded, *i.e.*, not counted in computing the 210-day minimum.

## NOTE

The parties may stipulate to judicial arbitration at any time. CCP §1141.12(a); Cal Rules of Ct 3.811(a)(4), 3.812(a).

## Appointment of Referee

Court cannot adopt any rule that contravenes the appointment of a referee to try some or all issues under CCP §§638-639. Govt C §68616(g).

## Dismissing Unnamed Doe Defendants

Local rules cannot require plaintiff to dismiss or sever unnamed Doe defendants before conclusion of introduction of evidence at trial. Govt C §68616(h).

## Challenging Judges Under CCP §170.6

Local rules cannot require parties to challenge a judge under CCP §170.6 sooner than (Govt C §68616(i)):

- a. **15 days** after party's *first* appearance in direct calendar courts; or
- b. The time set forth in CCP §170.6 in master calendar courts. See step 61, below.

## NOTE

Ascertain whether your case has been assigned to a judge for all purposes initially. If so, your challenge may need to be made within 15 days after that initial assignment. See, *e.g.*, Contra Costa Ct R 5(f).

## IF LOCAL RULE VIOLATES GOVT C §68616

If any local court rules appear to be in violation of the minimum time periods in Govt C §68616:

- a. The safest course is to comply with the local rule when not prejudicial to your client;

- b. A reasonable alternative is to request the trial court to order that a local rule need not apply in some specific respect to your case; or
- c. The riskiest approach is to simply disobey the local rule when necessary to protect your client, but in this instance you:
  - (1) Risk sanctions; and/or
  - (2) May find it necessary to challenge the rule in the appellate court.

## SANCTIONS FOR FAILURE TO COMPLY WITH TCDRA

Judges have power to impose sanctions, including case dismissal, for noncompliance with court rules aimed at reducing delays in litigation. Govt C §68608(b).

### NOTE

The court's ability to dismiss a case is limited, however, when counsel, and not the party, was responsible for noncompliance with case management rules implementing TCDRA.

*Example:* In Garcia v McCutchen (1997) 16 C4th 469, 66 CR2d 319, the California Supreme Court held that CCP §575.2(b) prohibits dismissal as a sanction when failure to comply with local court rules is the responsibility of counsel, not of the litigant.

## REVIEW DISMISSAL STATUTES

Statewide and local court rules implementing TCDRA have forced virtually every case to be resolved within 3 years after the complaint was filed. Nonetheless:

- a. Counsel should note the statutory provisions, cited below, subjecting cases to discretionary or mandatory dismissal if not brought to trial within a particular time period; and
- b. If you represent plaintiff and find these deadlines approaching, you should make a motion to advance the trial date to avoid dismissal. See Civ Proc Before Trial, chap 42.

### Discretionary

The court may dismiss any case not brought to trial within:

- a. **3 years** after action is commenced against defendant (CCP §583.420(a)(2)(A)); or
- b. **2 years** after action is commenced against defendant if the Judicial Council so prescribes because of the condition of the court calendar or for other reasons affecting the conduct of litigation or the administration of justice. CCP §583.420(a)(2)(B).

### NOTE

Under Cal Rules of Ct 3.1340, the court may dismiss an action that has not been brought to trial or conditionally settled within **2 years** after action is commenced against defendant.

### Mandatory

The court *must* dismiss any case not brought to trial within **5 years** after plaintiff files complaint. CCP §§583.310, 583.360.

## PREPARE CASE CALENDAR

Based on the disposition time goal that the court has assigned to your case, prepare a calendar of all relevant dates, *e.g.*:

- a. When complaint must be served, *e.g.*, 60 days after filing;
- b. Appearance at the initial case management conference, *e.g.*, 180 days after complaint was filed; and
- c. Deadline for disposition that applies to your case, *e.g.*, within 1 year after complaint is filed.

### NOTE

When you know the disposition time goal of your case, you can begin to develop a calendar tracking other relevant dates that

apply to your case. See Ascertain Disposition Goal for Your Case, above. See [steps 2-62](#), below, and [Appendixes A and B](#).

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 2. ORGANIZE YOUR TRIAL PREPARATION

STEP 2. ORGANIZE YOUR TRIAL PREPARATION

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WHEN YOU ACCEPT CASE

Begin determining, collecting, and organizing evidence and formulating your theories for trial when you first open the case file. See [Appendix C: Sample Trial Preparation Systems](#).

**Example:** Experienced trial attorneys start to outline their closing argument as soon as they accept a case, *e.g.*, as they develop their theories of liability for various causes of action, or research their options for responsive pleadings.

WHEN TRIAL DATE IS SET

You must begin serious trial preparation when the court sets the trial date, *e.g.*, at the initial case management conference. See [step 3](#), below.

Estimate Trial Date

Unless your case is likely to be designated as a "complex case" under [Cal Rules of Ct 3.400-3.403](#), assume that your trial date will be 1 year after the date the complaint was filed, based on Judicial Administration Standards and Court Management Rules. See [step 1](#), above.

DATE FOR COMPLETING DISCOVERY

In planning your trial preparation, note the date by which discovery must be completed:

If Arbitration

**15 days** before arbitration ([Cal Rules of Ct 3.822](#));

If Trial

**30 days** before *initial* trial date. [CCP §2024.020\(a\)](#).

CALCULATE DEADLINES

When you receive a triggering document, *e.g.*, notice of case management conference (see [step 3](#), below):

- a. Review applicable steps of this Action Guide;
- b. Read the relevant statutes and court rules; and
- c. Calendar the exact dates for meeting particular deadlines.

**Example:** Figure out the dates you will need to notice a motion for summary judgment or to serve subpoenas for personal appearance at trial on nonparty witnesses. See [steps 34](#) and [46](#), below.

Check Local Rules

Determine whether any local rules will affect your trial preparation, such as the manner in which you assemble the evidence. See, *e.g.*, Los Angeles Ct R 8.60, which requires pretrial marking of exhibits for identification.

**Cross-Reference:** See [Appendixes A](#) and [B](#) for additional examples of trial preparation tasks.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 3. PREPARE FOR CASE MANAGEMENT CONFERENCE

STEP 3. PREPARE FOR CASE MANAGEMENT CONFERENCE

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INITIAL CASE MANAGEMENT CONFERENCE

In every general civil case (unless exempt from disposition time goals; see [step 1](#), above), the court must set an initial case management conference to comprehensively review the case no later than 180 days after the filing of the initial complaint. [Cal Rules of Ct 3.721](#).

Determine Court's Procedure for Notice to Parties

Determine local court's procedure for giving parties notice of initial case management conference ([Cal Rules of Ct 3.722\(b\)](#)):

- a. Notice must be given no later than **45 days** before the conference; but
- b. The court may provide by local rule for the time and the manner of giving notice to the parties.

ADDITIONAL CONFERENCE PERMITTED

The court may order, or a party may request, an additional case management conference to be held at any time after the initial conference. [Cal Rules of Ct 3.723](#).

If Necessary for Case Management

However, the court ([Cal Rules of Ct 3.723](#)):

- a. Should require a party to appear at an additional conference only if an appearance is necessary for the effective management of the case; and
- b. In determining whether to hold an additional conference, must consider each case individually on its own merits.

MATTERS TO BE CONSIDERED AT CONFERENCE

At the case management conference, each party's counsel and each self-represented party must be ([Cal Rules of Ct 212\(b\)\(3\)](#)):

- a. Familiar with the case;
- b. Prepared to discuss and commit to the party's position on the issues listed under [Cal Rules of Ct 3.724](#) and [3.727](#), on which the parties are required to meet and confer (see [step 4](#), below); and
- c. Able to address the party's position about subjects on which the court may take appropriate action at the conference under [Cal Rules of Ct 3.727](#), including:
  - (1) Whether there are any related cases;
  - (2) Whether parties named in the complaint have been served, appeared, or been dismissed;
  - (3) Whether any additional parties may be added or the pleadings amended;
  - (4) Whether economic litigation procedures apply, if the case is a limited civil case, or the party intends to make a motion to exempt the case from these procedures;
  - (5) Whether any other matters, such as the bankruptcy of a party, may affect the court's jurisdiction or processing of the case;
  - (6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration or any other form of ADR, and the date by which the ADR must be completed;
  - (7) Whether an early settlement conference should be scheduled, and on what date;

- (8) Whether discovery has been completed and, if not, the date by which it will be completed;
- (9) What discovery issues are anticipated;
- (10) Whether the case should be bifurcated, or a hearing should be set for a motion to bifurcate under CCP §598;
- (11) Whether there are any cross-complaints that are not ready to be set for trial, and whether they should be severed;
- (12) Whether the case is entitled to any statutory preference;
- (13) Whether jury trial is demanded, and the identity of each party requesting a jury trial;
- (14) The date by which the case will be ready for trial and the available trial dates;
- (15) The estimated length of trial;
- (16) The nature of the injuries;
- (17) The amount of damages, including any special or punitive damages;
- (18) Any additional relief sought;
- (19) Whether there are any insurance coverage issues that may affect the resolution of the case; and
- (20) Any other matters that should be considered by the court or addressed in its case management order.

*Cross-Reference:* For factors that court must consider in setting the trial date, see step 8, below.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 4. MEET AND CONFER WITH COUNSEL

STEP 4. MEET AND CONFER WITH COUNSEL

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MEET-AND-CONFER REQUIREMENT

Timing

Unless the court orders another time period, counsel must meet and confer no later than **30 calendar days** before the case management conference. Cal Rules of Ct 3.724.

Method

Counsel have the option of conferring in person or by telephone.

MATTERS TO BE DISCUSSED

As they prepare for the case management conference, counsel must confer beforehand on:

- a. Each of the issues identified in Cal Rules of Ct 3.727 (see Matters to Be Considered at Conference, step 3, above); and
- b. The matters listed in Cal Rules of Ct 3.724, which include:
  - (1) Resolving any discovery disputes and setting a discovery schedule;
  - (2) Identifying and, if possible, informally resolving any anticipated motions;
  - (3) Identifying the facts and issues in the case that are uncontested and may be the subject of stipulation;
  - (4) Identifying the facts and issues in the case that are in dispute;
  - (5) Determining whether the issues of the case can be narrowed by eliminating any claims or defenses by means of a motion or otherwise;
  - (6) Possible settlement;
  - (7) Identifying the dates on which all parties and their attorneys are available or not available for trial, including the reasons for unavailability; and
  - (8) Other relevant matters.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 5. FILE AND SERVE CASE MANAGEMENT STATEMENT

STEP 5. FILE AND SERVE CASE MANAGEMENT STATEMENT

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TIMING

Each party must file with the court and serve on all other parties a case management statement no later than **15 calendar days** before the date set for the case management conference. Cal Rules of Ct 3.725(a).

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Parties must use the mandatory Case Management Statement (Judicial Council Form CM-110). Cal Rules of Ct 3.725(c). See Appendix H.

Subjects Covered

All applicable items on the form must be completed (Cal Rules of Ct 3.725(c)), including:

- a. Damages sought (see step 6, below);
- b. Whether a jury trial and a date for the trial are requested, and the estimated length of trial (see steps 7-8, below);
- c. Whether the case is entitled to preference (see step 9, below);
- d. Whether the case is suitable for judicial arbitration or other alternative dispute resolution (see steps 10-11, below);
- e. If a party anticipates motions for consolidation, coordination, bifurcation, or severance (see step 40, below);
- f. Date and description of any discovery to be completed (see steps 13-19, below); and
- g. The specific agreements resulting from the parties' meet-and-confer encounter (see step 4, above).

Counsel's Declaration of Written Authority

Counsel signing the case management statement represents that he or she has the authority to enter into stipulations at the case management conference on all issues raised by the statement, including written authority of the party when required. See Case Management Statement in Appendix H.

ADDITIONAL INFORMATION

Trial Representation

Each party must provide specific information in the case management statement on counsel representing the party at trial, including:

- a. Name of attorney and firm;
- b. Address;
- c. Telephone and fax numbers; and
- d. E-mail address.

Parties in Case

A plaintiff and cross-complainant must name in the case management statement (Judicial Council Form CM-110) any parties that:

- a. Have not been served (and explain why not);

- b. Have been served but have not appeared, and have not been dismissed;
- c. Have had a default entered against them; and
- d. Will be added, the date by which they will be served, and the nature of their involvement in the case.

#### JOINT STATEMENTS PERMITTED

Any two or more parties, instead of filing a separate case management statement, may file a joint statement. Cal Rules of Ct 3.725(b).

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 6. PROVIDE OR REQUEST STATEMENT OF DAMAGES

STEP 6. PROVIDE OR REQUEST STATEMENT OF DAMAGES

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CASE MANAGEMENT STATEMENT

Plaintiff's counsel must provide a statement of the damages, including a description of any equitable relief sought, in the Case Management Statement (Judicial Council Form CM-110). See [Appendix H](#).

DEFENDANT'S REQUEST FOR STATEMENT

In Personal Injury Case

If representing defendant or cross-defendant in an unlimited case, counsel should serve on plaintiff a request for an itemization of the claimed damages, involving ([CCP §425.11](#)):

- a. Personal injury; or
- b. Wrongful death.

When to Serve Request

Counsel may serve a request for a statement of damages on a plaintiff at any time. See [CCP §425.11](#).

NOTE

Consider filing a request for a statement of damages before the case management conference so that you can determine whether to request arbitration. See [step 20](#), below.

WHEN PLAINTIFF MUST SERVE STATEMENT

If Requested

Counsel representing plaintiff or cross-complainant must serve statement of damages within **15 days** after a request from defendant or cross-defendant ([CCP §425.11](#)); or

If Not Requested

Even if defendant does *not* request, serve the statement in an action for personal injury or wrongful death ([CCP §425.11](#)):

- a. If an answer is filed, at least **60 days** before trial; or
- b. Before requesting a default.

NOTE

Personal service of a statement of damages 15 days before entry of default was held to be reasonable notice under [CCP §§425.10, 425.11, 585](#), in [Schwab v Southern Cal. Gas Co.](#) (2004) 114 CA4th 1308, 1322, 8 CR3d 627. See also [Matera v McLeod](#) (2006) 145 CA4th 44, 62, 51 CR3d 331 (personal service 2 days before entry of default not reasonable).

WHAT TO INCLUDE IN STATEMENT

Include in statement of damages the nature and amount of special and general damages your client seeks to recover. [CCP §425.11](#).

NOTE

Check local rules, because some counties require that a similar statement, including biographical and family information, damages, and medical information, be served with the complaint.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 7. DEMAND JURY TRIAL, IF APPROPRIATE FOR CASE

STEP 7. DEMAND JURY TRIAL, IF APPROPRIATE FOR CASE

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HOW TO DEMAND JURY

No particular form of jury trial demand is required by statute or court rule. See CCP §631. Demand for a jury trial may be made:

- a. Orally, on the record, when the case is first set for trial, *e.g.*, as a matter normally addressed at the case management conference (see Cal Rules of Ct 3.727(13); see also CCP §631(c)(4) (party waives jury trial by failing to announce that jury is required at time case is first set for trial));
- b. By marking the appropriate item in the mandatory Case Management Statement (Judicial Council Form CM-110), which is filed and served before the case management conference (see form in Appendix H);
- c. In a separate document, drafted on pleading paper, entitled Demand for Jury Trial;
- d. As required by local rule in status questionnaires or other documents; or
- e. By noticed motion, if you do not have a right to a jury trial. See When Not Available, below.

When Available

Generally, a jury trial is available for issues of fact in cases for (CCP §592):

- a. Recovery of specific real or personal property, with or without damages;
- b. Money claimed due on a contract;
- c. Damages for breach of contract; and
- d. Damages for injuries.

When Not Available

A jury trial is not available when:

- a. Adjudication of the equitable issues is dispositive of the legal issues (*Nwoju v Uba* (2004) 122 CA4th 1229, 19 CR3d 416; *Raedeker v Gibraltar Sav. & Loan Ass'n* (1974) 10 C3d 665, 671, 111 CR 693); or
- b. The case is exclusively for equitable relief (see *Ce3K Eng'g Contractors v Amber Steel Co.* (1978) 23 C3d 1, 9, 151 CR 323), *e.g.*, if plaintiff seeks:
  - (1) Injunctive relief only (see *City of Turlock v Bristow* (1930) 103 CA 750, 756, 284 P 962); or
  - (2) Specific performance. See *Connell v Bowes* (1942) 19 C2d 870, 871, 123 P2d 456.

When Jury Appropriate

Consider a jury trial, *e.g.*:

- a. If your client is seeking a large sum in damages, unless you have a particularly unsympathetic client who will not make a good impression on the jury; or
- b. When you represent a plaintiff who is seeking substantial damages for pain and suffering.

MAKE DEMAND IF UNDECIDED

If there is *any* chance that you will want a jury trial, demand it at the time case is first set for trial. See CCP §631(c)(4). You can always waive it later.

## Deadline for Demand

Each party that demands a jury trial must deposit advance jury fees with the clerk or judge at least **25 calendar days** before the initial trial date in all actions other than unlawful detainer, which require that fees be deposited at least **5 days** before the trial date. CCP §631(b).

## Waiver of Jury Trial

Failing to mark the appropriate item or affirmatively stating "no" in mandatory Case Management Statement (Judicial Council Form CM-110) may waive jury trial unless you make an oral demand on the record at the case management conference. See How to Demand Jury, above.

**Example:** Checking "No" to question of whether you are requesting a jury on former at-issue memorandum was deemed a waiver. See March v Pettis (1977) 66 CA3d 473, 477, 136 CR 3.

## HOW TO REQUEST RELIEF IF JURY WAIVED

The trial court has discretion to allow a jury trial even after a party has waived it, on such terms as court decides are just. CCP §631(e).

## NOTE

If you waived a jury trial, and change your mind, make a noticed motion *as soon as possible!* See Civ Proc Before Trial, chap 41.

**Example:** Party waived jury trial by failing to post jury fees 25 days before trial as required under CCP §631. See Gann v Williams Bros. Realty, Inc. (1991) 231 CA3d 1698, 1704, 283 CR 128 (although party moved for relief, court found that reinstating jury 5 days before trial would be serious hardship for opposing party).

**Further Research:** See California Trial Practice: Civil Procedure During Trial, chap 2 (3d ed Cal CEB 1995), referred to throughout this Action Guide as Civ Proc During Trial.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 8. PROVIDE INFORMATION ON TRIAL DATE AND LENGTH OF TRIAL

STEP 8. PROVIDE INFORMATION ON TRIAL DATE AND LENGTH OF TRIAL

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SETTING OF TRIAL DATE

Determine Local Practice

Call court clerk's office to determine:

- a. If court customarily sets trial date at initial case management conference (see step 3, above);
- b. How many trials are set for each trial date; and
- c. Likelihood of trial starting on the date scheduled. See Govt C §68607(f) on judges' responsibility to commence trials on date set.

NOTE

Sometimes courts will not disclose this information; the best source may then be local practitioners.

Factors Court Must Consider in Setting Date

At the initial case management conference (see step 3, above) or any other proceeding at which the case is set for trial, the court must consider all of the facts and circumstances that are relevant in setting a case for trial, which may include the following factors listed under Cal Rules of Ct 3.729:

- a. Type and subject matter of the action to be tried;
- b. Whether the case has statutory priority;
- c. Number of causes of action, cross-actions, and affirmative defenses that will be tried;
- d. Whether any significant amendments to the pleadings have been made recently or are likely to be made before trial;
- e. Whether plaintiff intends to bring a motion to amend the complaint or to seek punitive damages under CCP §425.13;
- f. Number of parties with separate interests who will be involved in the trial;
- g. Complexity of the issues to be tried, including issues of first impression;
- h. Any difficulties in identifying, locating, or serving parties;
- i. Whether all parties have been served and the date by which they were served;
- j. Whether all parties have appeared in the action, and the date by which they appeared;
- k. How long the attorneys who will try the case have been involved in the action;
- l. The trial dates proposed by the parties and their attorneys;
- m. The professional and personal schedules of the parties and their attorneys, including any conflicts with previously assigned trial dates or other significant events;
- n. The amount of discovery that remains to be conducted in the case;
- o. The nature and extent of law and motion proceedings anticipated, including whether motions for summary judgment will be filed;
- p. Whether any other actions or proceedings that are pending may affect the case;

- q. The amount in controversy and the type of remedy sought;
- r. The nature and extent of the injuries or damages, including whether these are ready for determination;
- s. The court's trial calendar, including the pendency of other trial dates;
- t. Whether the trial will be a jury or a nonjury trial;
- u. The anticipated length of trial;
- v. The number, availability, and location of witnesses, including witnesses who reside outside the county, state, or country;
- w. Whether there have been any previous continuances of the trial or delays in setting the case for trial;
- x. The achievement of a fair, timely, and efficient disposition of the case; and
- y. Any other factor that would significantly affect the determination of the appropriate date of trial.

#### ESTIMATE LENGTH OF TRIAL

To make a realistic estimate of the length of trial:

- a. Add together the time needed to:
  - (1) Make motions in limine;
  - (2) Pick and instruct the jury;
  - (3) Give opening statement and closing argument;
  - (4) Read all transcripts, depositions, and documentary exhibits into evidence;
  - (5) Conduct direct and cross-examination of all witnesses;
  - (6) Argue any nonsuit motion; and
  - (7) Argue jury instructions and special verdict forms; and
- b. Discuss your estimate with opposing counsel and/or other experienced litigators.

#### NOTE

A short time estimate may improve your odds of obtaining an early trial date. If you significantly underestimate length of trial, however, you may offend and anger jurors and judges.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 9. IF CASE ENTITLED TO PREFERENCE

STEP 9. IF CASE ENTITLED TO PREFERENCE

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CASE MANAGEMENT STATEMENT

Unless you have made an earlier motion and obtained preference, indicate on the case management statement if you plan to seek a preferential trial date.

REVIEW GROUNDS FOR PREFERENCE

Review bases for statutory priority, *e.g.*:

Mandatory Trial Preference

The court must give preference if:

- a. Party is 70 years of age or older, and has both:
  - (1) A substantial interest in the action as a whole (CCP §36(a)(1)); and
  - (2) A health condition that makes preference necessary to prevent prejudicing party's interest in the litigation (CCP §36(a)(2));
- b. Party to a *wrongful death* or *personal injury* action is 14 years of age or younger, unless court finds that party does not have a substantial interest in case as a whole (CCP §36(b));
- c. Plaintiff seeks damages arising from a felony offense for which plaintiff was criminally convicted (CCP §37(a));
- d. Party is requesting trial de novo after judicial arbitration (CCP §1141.20); or
- e. Declaratory relief is sought. CCP §1062.3(a).

Discretionary Trial Preference

The court may give preference if:

- a. Almost 5 years have passed since complaint was filed (CCP §36(e)); see *Salas v Sears, Roebuck & Co.* (1986) 42 C3d 342, 345, 228 CR 504); or
- b. Party has a debilitating illness, creating doubt about his or her survival beyond 6 months. CCP §36(d).

Other Statutory Grounds

Other grounds for preference include, *e.g.*, libel and slander cases under CCP §460.5(c).

**Further Research:** See Civ Proc Before Trial, chap 42.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 10. DETERMINE WHETHER CASE IS SUITABLE FOR JUDICIAL ARBITRATION

STEP 10. DETERMINE WHETHER CASE IS SUITABLE FOR JUDICIAL ARBITRATION

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WHEN MANDATORY

Judicial arbitration is required in all nonexempt unlimited civil cases in each superior court:

Unlimited Civil Cases

- a. With 18 or more judges, if the amount in controversy in the court's opinion will not exceed \$50,000 for each plaintiff (CCP §1141.11(a)); or
- b. With fewer than 18 judges, if local rule provides for the court to determine when it is in the best interests of justice, and if the amount in controversy in the court's opinion will not exceed \$50,000 for each plaintiff. CCP §1141.11(b).

Limited Civil Cases

If local rule provides, all nonexempt limited civil cases must be submitted to arbitration on the court's determination that it is in the best interests of justice. CCP §1141.11(c).

NOTE

The court must wait at least **210 days** after the case is filed to order the case to arbitration. Govt C §68616(g). See Types of Cases That Are Exempt, below.

WHEN PURSUANT TO STIPULATION OR ELECTION

In all superior courts, a case may be submitted to judicial arbitration if:

- a. Parties stipulate to arbitration regardless of the amount in controversy (CCP §1141.12(a)); or
- b. Plaintiff files election and agrees that arbitration award shall not exceed \$50,000 (CCP §1141.12(b)).

TYPES OF CASES THAT ARE EXEMPT

Arbitration is not mandatory in:

- a. Case that involves a substantial and nonfrivolous claim for equitable relief (CCP §1141.13; Cal Rules of Ct 3.811(b)(1));
- b. Class action case (Cal Rules of Ct 3.811(b)(2));
- c. Small claims case or request for trial de novo from small claims court (Cal Rules of Ct 3.811(b)(3));
- d. Unlawful detainer proceeding (Cal Rules of Ct 3.811(b)(4));
- e. Family court matter (Cal Rules of Ct 3.811(b)(5), except as provided in Fam C §2554);
- f. Case that is exempt because court determines, or local rule states, that arbitration would not reduce probable time and expense of resolving the litigation (Cal Rules of Ct 3.811(b)(6), (7)); or
- g. Case that (Cal Rules of Ct 3.811(b)(8)):
  - (1) Court determines the amount in controversy for any *single* cause of action exceeds \$50,000; and
  - (2) Involves:
    - (a) Multiple causes of action; or
    - (b) A cross-complaint.

## WHEN TO REQUEST

Request arbitration:

- a. In the case management statement (see Appendix H);
- b. At the case management conference (Cal Rules of Ct 3.727(6));
- c. At any status or settlement conference, particularly if the estimate of damages *decreases*, making arbitration more suitable;
- d. By filing a motion or election:
  - (1) As soon as you determine that the case may be appropriate for arbitration; but
  - (2) If you represent *plaintiff* and elect arbitration (CCP §1141.12(c)):
    - (a) No later than **90 days** before trial; or
    - (b) Later if allowed by court (see *Nanfito v Superior Court* (1991) 2 CA4th 315, 319, 2 CR2d 876 (court will consider factors relevant to motions to dismiss)); or
- e. By filing a stipulation no later than the date the initial case management conference statement is filed, unless the court orders otherwise. Cal Rules of Ct 3.812(a).

## WHEN COURT DETERMINES CASE TO BE ARBITRATED

Unless the parties have stipulated to judicial arbitration, in courts with a judicial arbitration program under CCP §1141.11, the judge at the time of the case management conference or review must determine a case's suitability for arbitration. Cal Rules of Ct 3.722(a).

## NOTE

A trial court properly sanctioned an attorney for failing to participate meaningfully in a judicial arbitration. *Rietveld v Rosebud Storage Partners, L.P.* (2004) 121 CA4th 250, 16 CR3d 791.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 11. CONSIDER OTHER TYPES OF ALTERNATIVE DISPUTE RESOLUTION

STEP 11. CONSIDER OTHER TYPES OF ALTERNATIVE DISPUTE RESOLUTION

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CONSIDER ADVANTAGES OF EARLY ADR

Benefits of exploring alternative dispute resolution (ADR) early in a case include:

- a. Avoiding excessive litigation costs; and
- b. Identifying areas of agreement before parties have become entrenched in their positions.

Stipulating to ADR

The parties may agree to use an ADR process at any stage of the proceedings.

**Example:** The parties may request that a mutually acceptable mediator explore whether resolution can be reached.

Procedures

If all parties agree to use an ADR process, they must jointly complete the ADR stipulation form provided under Cal Rules of Ct 3.721 and file it with the court. Cal Rules of Ct 3.726.

NOTE

Counsel should check local rules for the procedures the court has adopted for ADR processes.

COURT MAY DECIDE CASE IS AMENABLE TO ADR

Unless the parties have already stipulated to alternative dispute resolution, the judge at the time of the case management conference must review and determine whether to assign the case to an alternative dispute resolution process. Cal Rules of Ct 3.722(a).

CONSIDER DISADVANTAGES

A disadvantage of early mediation or other ADR process is foreclosure of the opportunity to conduct discovery, which, if conducted, might strengthen your client's position.

**Further Research:** See Civ Proc Before Trial, chap 45.

NOTE

Although the focus of this Action Guide is preparing for trial, most cases are resolved without trial, and counsel should ensure that clients understand their options for alternative dispute resolution

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Before Case Management Conference/STEP 12. ATTEND CASE MANAGEMENT CONFERENCE

## STEP 12. ATTEND CASE MANAGEMENT CONFERENCE

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### APPEARANCE AT CONFERENCE

Each party's counsel and any unrepresented party must (Cal Rules of Ct 3.722(c)):

Personally or by Telephone

- a. Appear personally at the case management conference; or
- b. Attend by telephone, if the court permits under Cal Rules of Ct 3.670(c)(2).

### When Attendance Not Required

Based on its review of the parties' written submissions and other available information, the court may issue a case management order and notify the parties that no appearance at a conference is required. Cal Rules of Ct 3.722(d).

### Limited Civil Cases

Although the court must review each case and issue a case management order, local rules may provide that counsel and self-represented parties are not to attend an initial case management conference in limited civil cases, unless the court orders. Cal Rules of Ct 3.722(e).

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 13. DETERMINE WHAT YOU NEED TO COMPLETE DISCOVERY AND REMAINING FACTUAL INVESTIGATION

Complete Discovery

STEP 13. DETERMINE WHAT YOU NEED TO COMPLETE DISCOVERY AND REMAINING FACTUAL INVESTIGATION

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REVIEW CASE INFORMATION

At the time of the initial case management conference make sure that you have:

- a. Obtained information about parties' insurance coverage (see [step 14](#), below);
- b. Arranged for physical and/or mental examinations of parties, if appropriate (see [steps 15](#) and [16](#), below);
- c. Completed discovery in foreign countries, if appropriate (see [step 18](#), below);
- d. Completed discovery on possible class action claims, if applicable (see [step 19](#), below);
- e. Developed information needed to evaluate whether summary judgment or summary adjudication is desirable;
- f. Considered final and/or supplemental interrogatories, and requests for admissions (see [steps 35](#), [38](#), and [42](#), below); and
- g. Prepared for expert witness discovery. See [steps 36](#), [44](#), and [45](#), below.

COMPLETE ALL DISCOVERY IN A TIMELY MANNER

Discovery must be completed:

Before Judicial Arbitration

**15 days** before arbitration, unless the court rules otherwise (see [Cal Rules of Ct 3.822](#)); or

Before Trial

**30 days** before the initial trial date. [CCP §2024.020\(a\)](#).

NOTE

The Case Management Statement (Judicial Council Form CM-110) contains as an option for alternative dispute resolution: "Nonbinding judicial arbitration with discovery to remain open until 30 days before trial; order required under [Cal Rules of Ct 3.822](#)." See form in [Appendix H](#).

OBTAIN FACTS INFORMALLY

Complete your investigation of facts, *e.g.*:

Witnesses

From cooperative witnesses:

- a. Arrange for interviews;
- b. Obtain documents; and
- c. Take statements.

Consultants

Arrange for consultants to, *e.g.*:

- a. Perform tests, inspections, and statistical analyses; and
- b. Provide you with expert assistance in preparing your case for trial.

***Further Research:*** See Laying a Foundation to Introduce Evidence (Preparing and Using Evidence at Trial) (Cal CEB Action Guide April 2008), referred to throughout this Action Guide as Laying a Foundation; Civ Proc During Trial, chap 2.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 14. ASCERTAIN INSURANCE COVERAGE

STEP 14. ASCERTAIN INSURANCE COVERAGE

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WHEN APPROPRIATE

If not a subject of discovery before the case management conference, ascertain as soon as possible whether party is covered by an insurance policy that may be available to (see CCP §2017.210):

- a. Satisfy a potential judgment in whole or in part; or
- b. Indemnify or reimburse payments made to satisfy the judgment.

WHAT TO DO

Send interrogatories to opposing party or co-party to determine (CCP §2017.210):

- a. Existence and contents of an insurance agreement that might apply in the case;
- b. Carrier's identity; and
- c. Nature and limits of coverage.

NOTE

After the existence of coverage or the possibility of coverage has been determined, the carrier should be notified immediately. Internal corporate decisionmaking often moves substantially slower than the pace of litigation. Early contact may help alleviate any unnecessary delays.

**Further Research:** See California Civil Discovery Practice, chap 7 (4th ed Cal CEB 2006), referred to throughout this Action Guide as Civil Discovery.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 15. DETERMINE WHETHER PHYSICAL OR MENTAL EXAMINATION IS NEEDED

STEP 15. DETERMINE WHETHER PHYSICAL OR MENTAL EXAMINATION IS NEEDED

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WHEN AVAILABLE

You may obtain a physical or mental examination when the case involves a controversy as to the mental or physical condition of (CCP §2032.020(a)):

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

WHEN TO DECIDE

Decide whether to demand an examination early in the case, keeping in mind:

- a. Notice requirements (see step 16, below);
- b. Difficulty in coordinating attorney's, party's, and doctor's schedules; and
- c. Whether case may be settled without incurring cost of exam. See Consider Other Factors, below.

HOW TO OBTAIN

Secure parties' written agreement (CCP §2016.030), or if parties will not agree (see step 16, below):

- a. Make demand in appropriate case, *e.g.*, demand is appropriate if examination is of plaintiff in a personal injury case (CCP §2032.220); or
- b. Obtain court order. CCP §2032.310.

WHEN APPROPRIATE

You will probably want to request an examination when case involves, and you dispute, a claim:

- a. For physical injury (CCP §2032.220);
- b. For *substantial* emotional distress (see *Vinson v Superior Court* (1987) 43 C3d 833, 839, 239 CR 292);
- c. For *substantial* future wage loss;
- d. Based on life or work expectancy;
- e. Of aggravation of preexisting injury; or
- f. Of emotional injury possibly caused by prior psychological problems or past emotional experiences unrelated to present action (*e.g.*, child died one week before wrongful termination).

CONSIDER OTHER FACTORS

Also consider:

- a. Cost of exam (*e.g.*, doctor's fees, your fees to prepare demand) in relation to value of case (*e.g.*, amount opposing party is demanding);
- b. Whether your expert/doctor believes it will be necessary or helpful to examine opposing party; and

- c. Whether party has recovered from the condition so that an examination would not provide any additional information.

#### PREPARE FOR EXAMINATION

If you decide to seek a physical or mental examination:

- a. Contact opposing counsel to discuss stipulating to examination (CCP §2016.030);
- b. Contact your expert/doctor for available appointment; and
- c. Before appointment, provide doctor with all available medical records.

#### NOTE

Obtaining available records may involve time-consuming discovery (*e.g.*, interrogatories to identify health care providers, followed by subpoenas to obtain their records). Give yourself plenty of time.

*Further Research:* See Civil Discovery, chap 10.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 16. OBTAIN PHYSICAL OR MENTAL EXAMINATION, IF APPROPRIATE

STEP 16. OBTAIN PHYSICAL OR MENTAL EXAMINATION, IF APPROPRIATE

EXAMINATION OF PLAINTIFF IN PERSONAL INJURY CASE

WHAT TO DO

You can demand *one* physical examination of plaintiff when (CCP §2032.220(a)):

- a. Plaintiff is seeking recovery for personal injury; and
- b. Exam does not involve a diagnostic test or a procedure that is:
  - (1) Painful;
  - (2) Protracted; or
  - (3) Intrusive.

LOCATION OF EXAM

Exam must be conducted at a location within *75 miles* of examinee's residence. CCP §2032.220(a)(2).

SCHEDULE EXAM

You must schedule exam (CCP §2032.220(d)):

- a. At least **30 days** after you serve the demand and before the discovery cutoff (see step 13, above); or
- b. Within **30 days** after serving the demand, if the court granted your motion for an order shortening time.

PREPARE DEMAND

Specify in the demand (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 physician and/or surgeon who will perform examination.

PLAINTIFF'S DEADLINE TO RESPOND

**20 days** after you serve the demand, plaintiff must serve a written statement that he or she will (CCP §2032.230):

- a. Comply with demand as stated;
- b. Comply with demand as specifically modified by plaintiff; or
- c. Refuse, for reasons specified, to submit to the demanded physical exam.

## OTHER EXAMINATIONS

### WHAT TO DO

Obtain a stipulation or a court order for a (CCP §2032.310):

- a. Mental examination; or
- b. Physical exam other than that described in CCP §2032.220, *e.g.*:
  - (1) Exam of someone other than plaintiff;
  - (2) Exam that is intrusive or protracted; or
  - (3) More than one exam.

### PREPARE MOTION

If party to be examined will not stipulate, prepare notice and motion, together with declaration setting forth (CCP §2032.310(b)):

- a. Time, place, manner, conditions, scope, and nature of examination;
- b. Identity and specialty, if any, of person or persons who will perform examination; and
- c. That you have made a reasonable and good faith attempt to arrange for examination by agreement of the parties.

### NOTE

A court order granting a medical examination must specify the diagnostic tests and procedures by name (CCP §2032.320).  
*Carpenter v Superior Court* (2006) 141 CA4th 249, 261, 45 CR3d 821.

***Further Research:*** See Civil Discovery, chap 10.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 17. IF THERE IS A MEDICAL EXAMINATION, OBTAIN MEDICAL REPORTS

STEP 17. IF THERE IS A MEDICAL EXAMINATION, OBTAIN MEDICAL REPORTS

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WHEN YOU CAN OBTAIN REPORTS

You can obtain medical reports of a physical or mental examination your client submits to, or produces another person for, by making a written demand. CCP §§2032.610-2032.630.

Privileges and Protections Waived

If you demand and obtain a report of an examination under CCP §2032.610 or §2032.620, your client waives any privilege or work-product protection under CCP §§2018.010-2018.080 regarding reports and writings as well as the testimony of every *other* physician, psychologist, or licensed health care practitioner who (CCP §2032.630):

- a. Has examined your client, or other examinee, in respect of the same physical or mental condition; or
- b. May thereafter examine your client, or other examinee, in respect of the same physical or mental condition.

When Not to Request

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

- a. Do *not* make a written demand for examination reports; and
- b. Obtain opposing party's report by another procedure, *e.g.*:
  - (1) The examining doctor is designated as an expert and you demand that expert reports be exchanged (see CCP §2034.270); or
  - (2) 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.

DEMAND PROCEDURE

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

- a. A copy of the examiner's detailed written report of *the current* examination that sets out:
  - (1) Diagnoses;
  - (2) Prognoses;
  - (3) Conclusions;
  - (4) Any test results;
  - (5) History, including prior examinations; and
  - (6) Findings;
- b. A copy of reports of all *earlier* examinations of the *same* condition of the examinee made by that examiner or by any other examiner.

Expert's Delivery of Report

If a party submits to an examination under CCP §§2032.010-2032.650 and makes a demand for an examination report under CCP §2032.610:

- a. The examining expert must prepare and deliver a report containing the information specified in CCP §2032.610(a); even if

b. The party who retained the expert requested the expert not to produce a report and later designates the expert as a consultant rather than as a trial witness. Kennedy v Superior Court (1998) 64 CA4th 674, 75 CR2d 373.

## DEADLINE TO PROVIDE REPORTS

### Examining Party

The party who requested the examination must provide the reports to the demanding party (CCP §2032.610(b)) by the *earlier* of:

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

### Examinee

You must:

- a. At the same time the examining party produces reports of the examination, provide any existing reports of any examination of the same condition by any (CCP §2032.640):
  - (1) Physician and/or surgeon;
  - (2) Psychologist; or
  - (3) Licensed health care practitioner;
- b. *Promptly* provide any later reports of any previous or subsequent examination of the same condition. CCP §2032.640.

**Further Research:** See Civil Discovery, chap 10; Handling Expert Witnesses in California Courts (Cal CEB Action Guide May 2006), referred to throughout this Action Guide as Handling Expert Witnesses.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 18. IF NECESSARY, SEEK DEPOSITION IN ANOTHER STATE OR A FOREIGN COUNTRY

STEP 18. IF NECESSARY, SEEK DEPOSITION IN ANOTHER STATE OR A FOREIGN COUNTRY

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#### WHEN APPROPRIATE

Seek deposition in another state or foreign country if:

- a. A key witness or party is located in another state or a foreign country; and
- b. You are not able to obtain the information in a less costly and time-consuming manner.

#### TRY ALTERNATIVE STRATEGY

Try an alternative strategy, for example:

- a. If deponent is a party, request a stipulation that you be allowed to take party's deposition when, and if, party is in California or the United States, *e.g.*, for trial (see note, below);
- b. Send complete interrogatories, requests for documents, and requests for admissions *before* you decide to take the foreign or out-of-state deposition; or
- c. Try to obtain party or nonparty deponent's agreement to appear for deposition in California (it will probably be less costly to pay deponent's fare here than for you to travel to the other state or foreign country and comply with foreign procedures).

#### NOTE

Make sure that you obtain any stipulations regarding depositions and discovery timing *in writing*. CCP §2016.030.

#### WHAT TO DO

##### If Party Deposition

For a deponent who is a party, notice deposition. CCP §2027.010(b).

##### If Nonparty Deposition

a. For a deponent who is *not* a party, use process and procedures required and available under the laws of the state (CCP §2026.010(c)) or foreign nation (CCP §2027.010(c)), *e.g.*:

- (1) For an out-of-state deposition of a nonparty, notice motion before California court where case is pending for issuance of a commission (CCP §2026.010(f));
  - (2) For a foreign deposition, notice motion before California court where case is pending for issuance of (CCP §2027.010(d), (e)):
    - (a) Commission;
    - (b) Letters rogatory; or
    - (c) A letter of request.
- b. Retain attorney in other state or foreign jurisdiction to advise you on process and procedures applicable there.
- c. Seek stipulation from opposing party for issuance of commission, letters rogatory, or letter of request.

**Further Research:** See Obtaining Discovery: Initiating and Responding to Discovery Procedures (Cal CEB Action Guide March 2007), referred to throughout this Action Guide as Obtaining Discovery; Civil Discovery, chaps 6, 12, 13.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Complete Discovery/STEP 19. COMPLETE DISCOVERY FOR CLASS ACTION AND MOVE TO CERTIFY OR DECERTIFY

STEP 19. COMPLETE DISCOVERY FOR CLASS ACTION AND MOVE TO CERTIFY OR DECERTIFY

---

WHEN APPROPRIATE

Complete discovery concerning class action when plaintiff or cross-complainant has pleaded a class action alleging (CCP §382):

- a. Common issues of fact and law; and
- b. Common interest.

CONDUCT DISCOVERY

Use discovery to learn about and prepare case on class claims. See Atari v Superior Court (1985) 166 CA3d 867, 870, 212 CR 773.

Make Motion

If you have discovered that there are, or are not, common issues and common interests, move to:

- a. Certify the class; or
- b. Dismiss or decertify the class allegations. See City of San Jose v Superior Court (1974) 12 C3d 447, 453, 115 CR 797.

Timing

Make motion as soon as you have the necessary factual foundation because class status materially affects settlement and trial preparation.

**Further Research:** See City of San Jose v Superior Court (1974) 12 C3d 447, 454, 115 CR 797 (move as soon as practicable after beginning of case, similar to Fed R Civ P 23(c)(1)).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/If Case Set for Judicial Arbitration/STEP 20. PREPARE FOR AND PARTICIPATE IN JUDICIAL ARBITRATION

If Case Set for Judicial Arbitration

STEP 20. PREPARE FOR AND PARTICIPATE IN JUDICIAL ARBITRATION

---

SELECTION OF ARBITRATOR

The arbitration administrator will appoint an arbitrator unless the parties designate an arbitrator by stipulation or local rules provide otherwise. See Cal Rules of Ct 3.813, 3.815.

Court Mails List

Within **15 days** after date a case is set for arbitration, the administrator will provide names of potential arbitrators if parties have not already stipulated to an arbitrator. Cal Rules of Ct 3.815(b)(1)-(2).

Counsel May Reject Potential Arbitrator

Each side has **10 days** from date of mailing to file a written rejection of no more than one name on the list. Cal Rules of Ct 3.815(b)(3).

Administrator Appoints Arbitrator

On the 11th day, court's administrator will appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains. Cal Rules of Ct 3.815(b)(4).

If Arbitrator Refuses or Fails

If arbitrator declines to serve or does not hold a hearing within the time limits (see Complete Arbitration Hearing, below), administrator must vacate the appointment of the arbitrator and may either (Cal Rules of Ct 3.815(d)-(f)):

- a. Return case to top of arbitration list and appoint a new arbitrator; or
- b. Certify case to the court, which may:
  - (1) Set the case for trial;
  - (2) Order it reassigned for arbitration; or
  - (3) Make any other appropriate order to expedite its disposition.

ARBITRATOR NOTIFIES EACH PARTY OF HEARING

Within **15 days** after appointment, arbitrator must notify each party in writing of (Cal Rules of Ct 3.817(a)):

- a. Date (see Complete Arbitration Hearing, below);
- b. Time; and
- c. Place of arbitration.

DATE OF HEARING

Unless all parties and the arbitrator agree otherwise, arbitration hearing must not be set earlier than **30 days** after arbitrator sends notice of hearing. Cal Rules of Ct 3.817(b).

PREPARE FOR ARBITRATION

Prepare for arbitration as you would prepare for trial, *e.g.*:

- a. Review steps in this Action Guide (see steps 13-19, above, and steps 21-62, below); and
- b. Complete actions appropriate for arbitration of your case. See Appendix B for an Arbitration Preparation Checklist.

#### OBSERVE DISCOVERY CUTOFF BEFORE ARBITRATION

Discovery cutoff before arbitration is **15 days** before the hearing. Cal Rules of Ct 3.822.

#### NOTE

Do *not* delay discovery until after the arbitration, because, except for expert discovery, you cannot conduct discovery after the arbitration, "except by stipulation of the parties or by leave of court upon a showing of good cause." CCP §1141.24.

#### REVIEW LIST OF ADMISSIBLE DOCUMENTS

Review Cal Rules of Ct 3.823(b) for list of documents that may be admitted at a judicial arbitration without otherwise complying with the rules of evidence.

#### Deadline to Deliver Copies of Evidence

At least **20 days** before the hearing, deliver copies of documents you will offer in evidence to *all* parties. Cal Rules of Ct 3.823(b).

#### NOTE

If party is offering a statement of a witness you wish to cross-examine, request that witness's presence at arbitration. Cal Rules of Ct 3.823(b)(2)(C).

#### COMPLETE ARBITRATION HEARING

Arbitration hearing:

- a. Should be completed no later than 90 days from date of assignment of case to arbitrator (Cal Rules of Ct 3.817(c)); and
- b. Is considered completed when arbitrator files award (Cal Rules of Ct 3.817, 3.825(b)).

#### ARBITRATOR'S DEADLINE FOR FILING AWARD

Arbitrator's deadline for filing award is **10 days** after hearing is concluded. Cal Rules of Ct 3.825(b); see *Koll Hancock Torrey Pines v Biophysica Found., Inc.* (1989) 215 CA3d 883, 887, 264 CR 36 (deadline is not jurisdictional).

**Further Research:** See Civ Proc Before Trial, chap 37.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/If Case Set for Judicial Arbitration/STEP 21. REQUEST TRIAL DE NOVO IF APPROPRIATE

## STEP 21. REQUEST TRIAL DE NOVO IF APPROPRIATE

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### DEADLINE TO REQUEST

**30 days** after award is filed, if appropriate, file a request for trial de novo with court clerk. CCP §1141.20; Cal Rules of Ct 3.826(a), 3.827(a).

**Sample Form:** See Civ Proc Before Trial §37.57.

### EFFECT OF FAILURE TO REQUEST

If clerk does not receive the request within **30 days**, clerk will enter judgment on the award. CCP §1141.20(a); Cal Rules of Ct 3.827(a).

### EFFECT OF REQUEST

After request for trial de novo, court restores case to same position on civil active list that it occupied before being diverted to arbitration. CCP §1141.20(b); Cal Rules of Ct 3.826(b).

### EFFECT OF ARBITRATION ON DISMISSAL STATUTES

If, within the last 6 months of the 5-year period to bring a case to trial (CCP §§583.310, 1141.17(b)), court submits case or case remains in judicial arbitration:

How Tolled

*Exclude* from calculation of the 5-year period the time between (CCP §1141.17(b)):

- a. 4 years and 6 months after the complaint is filed; and
- b. Date the request for trial de novo is filed.

**Example 1:** Complaint was filed on April 12, 1983. Parties orally agreed to arbitration on January 8, 1988; stipulation was signed on April 4, 1988; case ordered to arbitration on May 3, 1988. Court held that oral agreement on January 8, 1988, tolled the 5-year period. See Porreco v Red Top RV Ctr. (1989) 216 CA3d 113, 122, 264 CR 609.

**Example 2:** Complaint was filed on November 27, 1978. On November 22, 1983, plaintiff elected to arbitrate; arbitration was heard on February 14, 1984, and award filed April 5, 1984. Court held that 5-year period was tolled as of May 27, 1983 (4 years and 6 months), until trial de novo was requested. See Lazelle v Lovelady (1985) 171 CA3d 34, 43, 217 CR 145; Jackson v Garmon (1990) 217 CA3d 860, 865, 266 CR 201 (tolled by voluntary election to arbitrate).

**Further Research:** See CCP §§1141.10-1141.30; Cal Rules of Ct 3.810-3.830; Civ Proc Before Trial, chap 37.

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After Trial Date Is Set

STEP 22. ADVISE CLIENT AND WITNESSES OF TRIAL DATE

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WHEN YOU KNOW TRIAL DATE

Notify Client and Witnesses

As soon as you know trial date, notify:

- a. Client;
- b. Insurance carrier, if any; and
- c. Witnesses.

Issue Expert Witness Subpoenas

It is essential to serve subpoenas as soon as possible on expert witnesses whom you want to testify at trial, because many experts require at least 30 to 45 days' notice to reserve the time to appear at a trial. See [step 46](#), below.

NOTE

Discuss cancellation policy and fees with experts, and advise them that civil trials do not always proceed as scheduled.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/After Trial Date Is Set/STEP 23. CALCULATE AND CALENDAR DEADLINES

STEP 23. CALCULATE AND CALENDAR DEADLINES

---

REVIEW DEADLINES

To determine deadlines for completing your trial preparation:

- a. Review steps in this Action Guide and decide how you intend to proceed, *e.g.*, if you intend to send final interrogatories by *mail*, or *personally*, or not at all (see [step 35](#), below); and
- b. Read applicable statutes or cases to determine dates and deadlines.

TRACK DATES

Calculate exact date an act should be performed and calendar the deadline.

NOTE

Use [Appendix A](#) as a checklist to help you calculate the date an act should be done, and to indicate that the act has been completed.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/After Trial Date Is Set/STEP 24. EXPLORE SETTLEMENT OPPORTUNITIES

STEP 24. EXPLORE SETTLEMENT OPPORTUNITIES

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REVIEW FILE

If you have not already determined the settlement value of your case:

Plaintiff

Review file to determine amount of damages and/or other matters your client wants, *e.g.*, injunction, quiet title.

Defendant

Review discovery responses and your investigation to determine approximate value of plaintiff's case.

FIGURE COST OF TRIAL

Calculate cost of preparing and pursuing case through trial, *e.g.*:

- a. Costs of remaining discovery;
- b. Expert witness fees for deposition preparation, depositions, and trial;
- c. Other witness fees;
- d. Costs of exhibits;
- e. Cost of your time and your associates' time to prepare case for trial and to try the case; and
- f. Estimate of your opposing counsel's time and hourly rate.

DISCUSS WITH CLIENT

Discuss with client settling the case before trial, including, *e.g.*:

Risks

Risk factors, such as:

- a. Probabilities of losing/winning; and
- b. Likelihood your client will collect a judgment if he or she prevails;

Expense

Litigation costs of:

- a. Going to trial, even if you win; and
- b. Losing at trial, including paying opposing parties' attorney fees when applicable;

Time

Time factors, such as:

- a. Estimate of time you will need to prepare for and complete trial; and
- b. Delay in recovery if case goes to trial, *e.g.*, time for trial, appeal process, enforcement of a judgment; and

Settlement Considerations

Strategy considerations, such as:

- a. The bottom-line amount your client will accept/pay to settle case; and
- b. Amount of your opening offer/demand.

#### HOW TO MAKE AN OFFER TO COMPROMISE

Make an offer or demand to compromise by:

- a. Telephone call or meeting with opposing counsel;
- b. Letter; or
- c. Written offer to compromise under CCP §998. See If Making a CCP §998 Offer, below.

#### NOTE

On negotiating settlements, see A Litigator's Guide to Effective Use of ADR in California, chap 3 (Cal CEB 2005).

#### IF MAKING A CCP §998 OFFER

#### DETERMINE WHETHER CCP §998 OFFER IS APPROPRIATE

Use a CCP §998 offer when, *e.g.*:

- a. Your client is prepared to accept or offer the amount proposed; and/or
- b. You feel that opposing party has miscalculated value of the case; and/or
- c. You anticipate incurring substantial costs and expenses, *e.g.*, expert witness expenses, *after* the offer.

#### HOW TO MAKE OFFER

CCP §998 offer must (CCP §998(b)):

- a. Be in writing (*Saba v Crater* (1998) 62 CA4th 150, 72 CR2d 401 (oral offer to compromise on deposition record does not satisfy CCP §998 requirements));
- b. Contain terms and conditions of judgment or award; and
- c. Contain provision that allows accepting party to indicate acceptance of offer by signing statement that offer is accepted.

#### WHEN OFFER MAY BE MADE

You may make CCP §998 offer:

- a. More than one time; and
- b. At any time throughout the litigation.

Deadline for Making CCP §998 Offer

Serve a CCP §998 offer no later than **10 days** before the beginning of trial or arbitration. CCP §998(b).

#### NOTE

If accepted, a CCP §998 offer results in entry of judgment. In cases in which confidentiality is a concern, be certain that the client understands that this type of resolution will be reflected in court records that are available to the public.

**Further Research:** For detailed discussion of procedures for making CCP §998 offers, see Civ Proc Before Trial, chap 47.

IF YOU RECEIVE A CCP §998 OR OTHER OFFER

HOW TO ACCEPT OFFER

Acceptance of offer must be (CCP §998(b)):

- a. In writing; and
- b. Signed by accepting party's counsel or, if not represented by counsel, by accepting party.

TIMING FOR ACCEPTING CCP §998 OFFER

A CCP §998 offer is deemed withdrawn if you do not accept it by the *earliest* of (CCP §§998(b)(2), 1013(a)):

- a. Trial;
- b. Arbitration; or
- c. Within:
  - (1) **30 days** if it was personally delivered;
  - (2) **35 days** if mailed to an address within California (see *Poster v Southern Cal. Rapid Transit Dist.* (1990) 52 C3d 266, 275, 276 CR 321 (CCP §1013(a) applies to CCP §998 offers));
  - (3) **40 days** if mailed to an address outside California but within the United States; or
  - (4) **50 days** if mailed to an address outside the United States.

*Example:* Offer was properly withdrawn when party *filed the acceptance but did not communicate* it to the offering party within 30 days. *Drouin v Fleetwood Enters.* (1985) 163 CA3d 486, 491, 209 CR 623.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

OTHER OFFER

Accept any other settlement offer at any time before:

- a. Offering party withdraws offer; or
- b. Offer expires by its own terms, *e.g.*, "This offer shall remain open for 30 days."

FILE OFFER AND ACCEPTANCE

CCP §998 Offer

File CCP §998 offer and proof of acceptance as soon as possible. CCP §998(b)(1).

Other Offer

If any other offer has been accepted that settles or otherwise disposes of entire case (Cal Rules of Ct 3.1385(a)(1)):

a. Immediately file written notice with the court, and serve the notice on all parties and any "arbitrator or other court-connected ADR neutral involved in the case;" and

b. *Call* all of the above if a hearing, conference, or trial is scheduled to take place within 10 days.

#### EFFECT OF FAILURE TO ACCEPT CCP §998 OFFER

Party to whom offer was made may become obligated to pay costs and expert fees incurred by offering party *after* offer *if* offeree (CCP §998(c)-(e)):

a. Did not accept the CCP §998 offer; and

b. Fails to obtain a more favorable judgment.

#### NOTE

It is abuse of discretion for court to refuse to award expert witness fees after party made good faith CCP §998 offer. *Thompson v Miller (2003) 112 CA4th 327, 338, 4 CR3d 905* (when offering party obtains judgment more favorable than its pretrial offer, offer is presumed to have been made in good faith; opposing party has burden of proving otherwise).

*Further Research:* On procedures for accepting CCP §998 offers, see Civ Proc Before Trial, chap 47.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 25. ASCERTAIN DEADLINES FOR PRETRIAL TASKS

Trial Preparation

STEP 25. ASCERTAIN DEADLINES FOR PRETRIAL TASKS

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REVIEW LOCAL RULES

Check deadlines and procedures for submitting pretrial papers, *e.g.*, trial brief, motions in limine.

BEGIN PREPARATION EARLY

Allow enough time to:

- a. Review all the documents in the case (see [step 27](#), below);
- b. Research the legal and evidentiary issues (see [step 28](#), below);
- c. Prepare trial documents, *e.g.*, motions in limine, trial brief (see [step 51](#), below); and
- d. Prepare trial checklists and outlines for use before and during trial.

**Further Research:** See [Civ Proc During Trial, chap 3](#).

STEP 26. SET UP TRIAL SYSTEM

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OBJECTIVE

Set up a trial system (trial book or trial folder) to organize all the pretrial and trial papers that you anticipate using to prove your case.

NOTE

See [Appendix C](#), Sample Trial Preparation Systems for how to create a trial system.

WHAT TO INCLUDE

The contents will depend on the system you choose and the type of case, but should generally provide easy access to, *e.g.*:

- a. Pleadings, discovery, and other file documents (see [step 27](#), below);
- b. Legal research (see [step 28](#), below);
- c. Evidence (see [step 29](#), below), including:
  - (1) Documentary evidence (see [step 31](#), below);
  - (2) Witness information (see [steps 27](#) and [52](#), below); and
  - (3) Judicial notice (see [step 32](#), below);
- d. Trial briefs (see [step 51](#), below);
- e. Jury instructions and voir dire (see [step 53](#), below); and
- f. Opening and closing statements. See [step 54](#), below.

**Further Research:** See [Civ Proc During Trial, chap 3](#).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 27. REVIEW CASE FILES AND EXTRACT RELEVANT INFORMATION

STEP 27. REVIEW CASE FILES AND EXTRACT RELEVANT INFORMATION

---

PLEADINGS

During your review of pleadings:

- a. Extract all pertinent pleadings (and applicable pretrial orders) from your files; and
- b. Organize and label them so that you can find relevant allegations and admissions for use at trial.

DISCOVERY

During your review of discovery:

- a. Extract all interrogatories/requests for admissions and responses from your files, and put them together;
- b. Determine which facts have been admitted that you do not need to prove at trial; and
- c. Be sure to note whether you have *original* questions and responses that will be used at trial. See CCP §§2030.410, 2033.410.

DEPOSITIONS

Review and organize:

- a. Summaries and copies of depositions;
- b. Any additions or corrections made; and
- c. Cross-references between depositions and deposition exhibits.

NOTE

Be sure to locate originals and arrange for them to be at trial if necessary. See step 31, below; CCP §2025.620.

WITNESS INFORMATION

For each witness, review any declarations, depositions, and summary of anticipated testimony to:

- a. Use in preparing your evidence checklist (see step 29, below); and
- b. Provide to witness to use in preparing for testimony. See step 52, below.

**Further Research:** See step 52, below; Laying a Foundation.

STEP 28. RESEARCH LEGAL ISSUES

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SUBSTANTIVE LAW

Based on your review of pleadings and evidence in the case (see [step 27](#), above):

- a. Identify and research the pertinent legal issues, *e.g.*, the elements of a cause of action or defense; and
- b. Copy key substantive cases for your trial notebook.

RESEARCH EVIDENTIARY LAW

Anticipate

Be prepared:

- a. For opposing parties' objections to your evidence; and
- b. For your objections to opposing parties' evidence (see [Laying a Foundation, Appendix C; California Trial Objections \(Cal CEB Annual\)](#), referred to throughout this Action Guide as Trial Objections).

NOTE

Consider that the court may exclude some of your evidence. To encourage the judge to admit the evidence, prepare offers of proof on important issues to present to the judge after an objection has been made. See [Effective Introduction of Evidence in California §§3.21-3.26 \(2d ed Cal CEB 2000\)](#), referred to throughout this Action Guide as Effective Intro of Evidence; [Laying a Foundation](#).

Review

Review all applicable:

- a. Presumptions;
- b. Burdens of proof; and
- c. Burdens of going forward.

**Further Research:** See Jefferson's California Evidence Benchbook, chaps 45-46 (3d ed CJA-CEB 1997); [Evid C §§110, 115, 190, 500-502, 520-550, 600-669.5](#).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 29. REVIEW AND EVALUATE YOUR EVIDENCE

STEP 29. REVIEW AND EVALUATE YOUR EVIDENCE

---

PREPARE CHECKLIST

Prepare a checklist to use at trial that sets forth:

- a. Issues you must prove;
- b. Evidence you will use to prove the issues, *e.g.*, documentary evidence, witness testimony;
- c. Location of evidence in your trial system, *e.g.*, pleadings file, witness file;
- d. Issues that opposing party must prove;
- e. Anticipated evidence that opposing party will use; and
- f. Your rebuttal evidence.

NOTE

See [Appendix C](#) for further discussion of trial checklists.

DETERMINE HOW YOU WILL USE EVIDENCE

Review evidence you have assembled and determine whether you will use it to:

- a. Prove or disprove a factual issue;
- b. Refresh a witness's recollection;
- c. Impeach a witness;
- d. Rehabilitate a witness; or
- e. Illustrate a concept for the jury with charts, graphs, or blow-ups.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 30. DETERMINE WITNESSES WHO WILL TESTIFY

STEP 30. DETERMINE WITNESSES WHO WILL TESTIFY

---

DETERMINE WHETHER YOU NEED EXPERT TESTIMONY

Determine whether:

- a. You need expert testimony; or
- b. A lay witness can be used instead. See, *e.g.*, *Goebel v Lauderdale* (1989) 214 CA3d 1502, 1508, 263 CR 275 (when negligence is clear, trier of fact may not need expert testimony).

IF YOU DECIDE TO USE EXPERT

If you decide to use an expert:

- a. Make sure you have sufficient evidence *for the record* to support the expert's opinion;
- b. Read all relevant writings by your expert witness; and
- c. Contact the expert and make sure he or she is available when needed.

NOTE

If you decide to retain an expert, be sure you have provided all appropriate materials necessary for him or her to render an informed opinion. Remember however, that the expert will be required to produce everything reviewed when deposed.

DECIDE WHICH LAY WITNESSES TO CALL

From your evidence checklist (see step 29, above), decide:

- a. Which lay witnesses to call to testify at trial;
- b. Which witnesses you should question about particular evidence; and
- c. Any witnesses you should *not* question about evidence, even if they have knowledge of it.

ARRANGEMENTS FOR WITNESSES AT TRIAL

To ensure availability of your witnesses:

- a. Determine documents you need to prepare to make sure witnesses will attend, *e.g.*, subpoena or notice to attend (see steps 45-46, below);
- b. Prepare a schedule for witnesses at trial to make sure you always have witnesses available, and the trial proceeds smoothly; and
- c. Note any special arrangements necessary for each witness, *e.g.*, an interpreter.

**Further Research:** See Laying a Foundation; Handling Expert Witnesses.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 31. ORGANIZE YOUR DOCUMENTARY EVIDENCE

STEP 31. ORGANIZE YOUR DOCUMENTARY EVIDENCE

---

LOCATE DOCUMENTS

Source Documents

Extract from your case files all materials concerning production of documents in the case, *e.g.*:

- a. Requests for documents;
- b. Subpoenas duces tecum;
- c. Notices of deposition with documents; and
- d. Other informal exchanges of documents (*e.g.*, cover letters).

Documentary Evidence

For use at trial:

- a. Compile copies or originals of all relevant documents;
- b. Index all documents you intend to introduce at trial; and
- c. Prepare subpoena duces tecum or notice to obtain any documents needed from party or third party. See [steps 45](#) and [46](#), below.

PREPARE FOUNDATION FACT CHECKLIST

List all foundational facts you need to prove in order for court to admit each exhibit. See McElhaney, *Laying Foundations*, 76 ABA J 86 (Apr. 1990); see also [Laying a Foundation](#).

PREPARE INDEX OF DOCUMENTS

Prepare an index of your documentary evidence that includes:

- a. Each document you intend to introduce;
- b. A place to indicate whether a document has been admitted into evidence or rejected, and date of admission or rejection; and
- c. How you will lay a foundation to introduce the document, *e.g.*:
  - (1) Each prospective witness through whom you intend to introduce the exhibit;
  - (2) Deposition testimony that lays the foundation and that would be admissible (see [CCP §2025.620](#));
  - (3) Requests for genuineness of documents under [CCP §§2033.010, 2033.410](#); or
  - (4) Stipulation. See Consider Stipulating About Documents, below.

CONSIDER STIPULATING ABOUT DOCUMENTS

Contact opposing counsel to discuss possible stipulations to:

- a. Use copies at trial as admissible secondary evidence under [Evid C §1521](#) (*e.g.*, documents produced in response to discovery requests); and
- b. Allow interrogatory answers and admissions to be presented to the jury by reading from the subscribed copies.

*Sample Form:* See Appendix E for a sample prepared stipulation.

*Further Research:* See Civ Proc During Trial, chap 3.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 32. DECIDE WHETHER TO USE JUDICIAL NOTICE

STEP 32. DECIDE WHETHER TO USE JUDICIAL NOTICE

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REVIEW PROPER MATTERS FOR JUDICIAL NOTICE

Review matters which court must or may take judicial notice of to prove facts:

When Mandatory

Judicial notice *must* be taken of (Evid C §451):

- a. California and federal statutory and case law.
- b. Any matter specified in Govt C §§11343.6, 11344.6, 18576, or 44 USC §1507.
- c. Bus & P C §6076 (Rules of Professional Conduct for Attorneys) and rules of practice and procedure for courts of the state.
- d. Rules of pleading, practice, and procedure prescribed by:
  - (1) United States Supreme Court;
  - (2) Court of Claims;
  - (3) Customs Court;
  - (4) Federal Rules of Civil and Criminal Procedure;
  - (5) Admiralty Rules; and
  - (6) General Orders and Forms of Bankruptcy.
- e. True significance of all English words and phrases and all legal expressions.
- f. Facts and propositions that are "so universally known" that they cannot reasonably be the subject of dispute.

When Discretionary

Judicial notice *may* be taken of (Evid C §452):

- a. Statutory or case law of any state.
- b. Resolutions and private acts of Congress and the California legislature.
- c. Regulations and legislative enactments issued under United States authority.
- d. Official acts of the legislative, executive, and judicial departments of:
  - (1) The United States; or
  - (2) Any state.
- e. Records or rules of any state or federal court.

NOTE

Judicial notice may not be used to establish the truth of a factual finding in an earlier judicial opinion. However, the finding itself may be a proper subject of judicial notice if it has a res judicata or collateral estoppel effect in a subsequent action. Kilroy v State (2004) 119 CA4th 140, 148, 14 CR3d 109.

- f. Law of:

- (1) An organization of nations;
  - (2) Foreign nations; and
  - (3) Public entities in foreign nations.
- g. Facts and propositions that are of "such common knowledge" within the territorial jurisdiction of the court that they cannot reasonably be disputed.
- h. Facts and propositions:
- (1) Not reasonably subject to dispute; and
  - (2) Capable of "immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

#### PREPARE REQUEST FOR JUDICIAL NOTICE

Prepare a written request, or prepare a checklist for your oral request at trial, including:

- a. Matters you want court to judicially notice;
- b. Statutory authority for your request (see Review Proper Matters for Judicial Notice, above); and
- c. Any other information that will:
  - (1) Provide opposing party sufficient notice of the request to enable party to prepare to meet it (Evid C §453(a)); and
  - (2) Enable court to take judicial notice. Evid C §453(b).

#### Provide Copies

Provide court and each party with a copy of the material of which you seek judicial notice. Cal Rules of Ct 3.1306(c).

#### IF SEEKING JUDICIAL NOTICE OF COURT PLEADINGS

Follow general requirements for judicial notice (see Prepare Request for Judicial Notice, above), plus additional requirements for judicial notice of court pleadings:

##### In Same Court

For court pleadings in the same court:

- a. Prepare written "Request to Clerk for Files," specifying part of court file to be judicially noticed (Cal Rules of Ct 3.1306(c)); and
- b. Make arrangements with clerk to have file in the courtroom at time of trial.

##### From Another Court

For court pleadings from another court:

- a. Subpoena court file for hearing; or
- b. Obtain certified copies of pleadings from other court and submit them as official records.

**Further Research:** See Civ Proc During Trial, chap 14; Effective Intro of Evidence, chap 31.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/Trial Preparation/STEP 33. AMEND PLEADINGS, IF ADVISABLE

STEP 33. AMEND PLEADINGS, IF ADVISABLE

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WHEN APPROPRIATE

Amendment of pleadings is appropriate when your review of the file reveals:

- a. Mistakes in names, dates, or other particulars in the pleading;
- b. Evidence that would support a cause of action or defense that you did not plead;
- c. Elements of a cause of action or affirmative defenses that were not properly pleaded; or
- d. Evidence to support additional damages.

WHEN TO MOVE TO AMEND PLEADINGS

Move to amend pleadings as soon as possible because (see *Avedissian v Manukian* (1983) 141 CA3d 379, 384, 190 CR 291):

- a. Court will consider the prejudice to opposing party and whether, *e.g.*, the amendment will require a new round of pleadings or additional discovery; and
- b. If amendment will delay trial, and you could have brought motion earlier, court will be less likely to grant motion and may grant costs to opposing party.

HOW TO AMEND

Prepare (Cal Rules of Ct 3.1324):

- a. Motion, which must:
  - (1) Include copy of proposed amendment; and
  - (2) Specify allegations you want to add or delete with reference to page, line, or paragraph of the original pleading;
- b. Declaration setting forth:
  - (1) Effect of amendment;
  - (2) Why amendment is necessary and proper;
  - (3) When facts giving rise to proposed amendment were discovered; and
  - (4) Reason that you did not seek amendment earlier.

DEADLINE TO FILE AND SERVE MOVING PAPERS

File and serve moving papers:

If Personally Served

At least **16 court days** before hearing if you personally serve. CCP §1005(b); Cal Rules of Ct 3.1300(a).

If Served by Mail

Add to the 16 court days.

- a. **5 calendar days** if you serve by mail to or from an address within California;
- b. **10 calendar days** if you serve by mail to or from an address outside California but within the United States; or

c. **20 calendar days** if you serve by mail to or from an address outside the United States. CCP §1005(b).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery. CCP §1005(b).

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

*Further Research:* See Civ Proc Before Trial, chap 16.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 34. FILE MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES

120 to 60 Days Before Trial

STEP 34. FILE MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION OF ISSUES

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WHEN APPROPRIATE

Filing a motion for summary judgment or summary adjudication of issues is appropriate when you seek:

- a. Dismissal of the lawsuit; or
- b. Adjudication of certain causes of action or defenses.

WHEN TO FILE

Prepare motion when you receive notice of trial setting so that you:

- a. Have time to seek a writ before the trial date if motion is denied (**20 days** to bring a writ after order denying motion is entered (CCP §437c(l));
- b. Can complete expert witness discovery if motion is denied;
- c. Leave time for the judge to take the matter under submission; and
- d. Will not have difficulty in calendaring a motion date by the hearing deadline.

DEADLINE TO FILE AND SERVE

You must file and serve **at least 105 days** before trial if personally served, because (CCP §437c(a)):

Date of Hearing

The hearing must be:

- a. No later than **30 days** before the trial date; or
- b. Within **30 days** of the trial date if, for good cause, the court orders.

NOTE

A trial court may not properly adjudicate a summary judgment motion without permitting the parties to have an opportunity for oral argument. *Brannon v Superior Court* (2004) 114 CA4th 1203, 8 CR3d 491.

75-Day Notice of Motion

Further, under CCP §437c(a), the motion must be served at least:

- a. **75 days** before the hearing, if the notice of the motion is personally served;
- b. **80 days**, if you mail to an address in California;
- c. **85 days**, if you mail to an address outside California, but in the United States;
- d. **95 days**, if you mail to an address outside the United States; or
- e. **75 days plus 2 court days** if served by facsimile transmission, express mail, or another method of overnight delivery.

NOTE

Except for CCP §1005(c), which applies to service of opposition and reply papers, CCP §437 (not CCP §§1005, 1013) governs time limits for summary judgment motions. Moreover, the trial court cannot shorten the notice period without the parties' consent. Urban v Musicians' Credit Union (2004) 120 CA4th 758, 766 n13, 15 CR3d 839, citing McMahon v Superior Court (2003) 106 CA4th 112, 118, 130 CR2d 407.

#### If Court Grants Continuance

It is wise to allow even more than 105 days' notice, because (see CCP §437c(h)):

- a. The opposition may submit an ex parte request for a continuance at any time before or on the date its opposition papers are due, which is 14 days before the hearing;
- b. The affidavits need only allege that facts essential to justify its opposition may exist, but cannot be presented without additional discovery; and
- c. If the court grants the continuance, the hearing is likely to be significantly delayed.

#### NOTE

In determining whether to grant the opposing party a continuance for further discovery under CCP §437c(h), the trial court may consider whether that party has been diligent in completing discovery. Cooksey v Alexakis (2004) 123 CA4th 246, 19 CR3d 810.

#### DETERMINE LOCAL CALENDARING RULES

In calendaring these dates, check with your local court to determine when it hears motions for summary judgment.

**Example:** Suppose the court hears summary judgment motions only on Thursdays. If 30 days before trial is a Friday and you calendar that as the last day to have the motion heard, you may miss the deadline. Instead, you would need to calendar a Thursday that is at least 30 days before the trial date as the last day to have the motion heard; 75 days before that would be the last day to serve the motion by hand.

**Further Research:** See CCP §437c, and Making and Opposing a Summary Judgment Motion (Cal CEB Action Guide October 2005).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 35. MAKE FINAL DISCOVERY REQUESTS

STEP 35. MAKE FINAL DISCOVERY REQUESTS

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PREPARE DISCOVERY

Determine final information you need for discovery and prepare the appropriate:

- a. Interrogatories (CCP §§2030.010-2030.080);
- b. Requests for admissions (CCP §2033.050);
- c. Demands to inspect or produce (CCP §§2031.010-2031.050); and
- d. Notice of party depositions. CCP §§2025.210-2025.280.

WHEN TO SERVE

Serve discovery requests early enough (*e.g.*, 120-90 days before trial) to allow:

- a. Proper response time (see When Responding Party Must Act, below); and
- b. Enough time for you to review responses and bring a motion to compel, if necessary. See step 49, below.

DEADLINE BEFORE TRIAL

Responses or Inspection

**61 days** before trial is the last day to *personally* serve interrogatories, requests for admission, or inspection demands in order to obtain responses before discovery cutoff, *i.e.*, 30 days to respond + cutoff of 30 days before trial. CCP §2024.020(a).

Deposition

**41 days** before trial is the last day to *personally* serve a notice of deposition to have the deposition begun before the discovery cutoff, *i.e.*, 10 days' deposition notice + 30-day cutoff. CCP §§2025.210-2025.280, 2024.020(a). See step 37, below.

NOTE

Be sure to add additional days to allow time for mailing and to notice a motion to compel. See step 49, below.

DEADLINE BEFORE ARBITRATION

If your case will be arbitrated, to obtain responses before discovery cutoff (**15 days** before arbitration — Cal Rules of Ct 3.822; CCP §1141.24), *personally serve* interrogatories, requests for admission, or inspection:

Responses or Inspection

**46 days** before arbitration, *i.e.*, time to respond (30 days) + 15-day cutoff time frame;

Deposition

**26 days** before arbitration, *i.e.*, 10 days' deposition notice + 15-day cutoff time frame.

WHEN RESPONDING PARTY MUST ACT

Interrogatories

Responding party must serve verified response on all parties within (CCP §§2030.260, 2016.050, 1013):

- a. **30 days** after you personally serve interrogatories;

- b. **35 days** after you serve interrogatories by mail to an address within California;
- c. **40 days** after you serve interrogatories by mail to an address outside California but within the United States; or
- d. **50 days** after you serve interrogatories by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

Request for Admissions

Responding party must serve verified response on all parties within (CCP §§2033.250, 2016.050, 1013):

- a. **30 days** after you personally serve requests;
- b. **35 days** after you serve by mail to an address within California;
- c. **40 days** after you serve by mail to an address outside California but within the United States; or
- d. **50 days** after you serve by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

Demand for Inspection

Responding party must:

a. Serve a response within (CCP §§2031.260, 1013):

- (1) **30 days** after you personally serve demand;
- (2) **35 days** after you serve by mail to an address within California;
- (3) **40 days** after you serve by mail to an address outside California but within the United States; or
- (4) **50 days** after you serve by mail to an address outside the United States; and

b. Comply with the reasonable time and place you set for inspection that is at least (CCP §§2031.030(c)(2), (3), 1013):

- (1) **30 days** after you personally serve demand;
- (2) **35 days** after you serve by mail to an address within California;
- (3) **40 days** after you serve by mail to an address outside California but within the United States; or

(4) **50 days** after you serve by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

Depositions

A party deponent must appear if the deposition you scheduled is for a date at least (CCP §§2025.210-2025.280, 2016.050, 1013):

- a. **10 days** after you personally serve deposition notice;
- b. **15 days** after you serve notice by mail to an address within California;
- c. **20 days** after you serve notice by mail to an address outside California but within the United States; or
- d. **30 days** after you serve notice by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

*Further Research:* See Obtaining Discovery.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 36. DEMAND DISCLOSURE OF EXPERT WITNESSES

STEP 36. DEMAND DISCLOSURE OF EXPERT WITNESSES

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WHEN APPROPRIATE

Demanding disclosure of expert witnesses is appropriate when you seek mutual and simultaneous exchange of names and addresses of any expert witness expected to testify at trial. CCP §2034.210

SCHEDULE EXCHANGE DATE

Set as date for exchange in your demand the *later* of (CCP §2034.230):

- a. **50 days** before the initial trial date; or
- b. **20 days** after you serve the demand.

NOTE

Some courts may set the date for exchange of expert witnesses in a status or case management conference as part of the discovery plan.

DEADLINE TO SERVE DEMAND

Serve demand for exchange of information concerning expert witnesses by the *later* of (CCP §§2034.220, 2016.050):

- a. **10 days** after *initial* trial date has been set; or
- b. **70 days** before *that* trial date.

**Sample Form:** For a sample prepared demand, see Handling Expert Witnesses, Appendix A.

**Further Research:** See Civil Discovery, chap 11.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 37. ARRANGE TO TAKE DEPOSITIONS OF NONPARTIES

STEP 37. ARRANGE TO TAKE DEPOSITIONS OF NONPARTIES

DEPOSITION REQUIRING NONPARTY'S APPEARANCE

DEADLINE FOR NOTICING DEPOSITION BEFORE TRIAL

Because of the 30-day discovery cutoff (CCP §§2024.020(a), 2025.270(a), 1013):

- a. Personally serve deposition notice on parties at least **41 days** before trial (30 days + 10 days of CCP §2025.270(a)); or
- b. If service is by other than personal delivery, serve at least **41 days** before trial plus additional days set forth in CCP §1013.

SCHEDULE DEPOSITION

Prepare notice of deposition and fill out Judicial Council form of deposition subpoena.

Select Appropriate Mandatory Judicial Council Subpoena Form

To compel a nonparty to appear at a deposition, you must use one of two Judicial Council deposition subpoena forms:

- a. Deposition Subpoena for Personal Appearance (Judicial Council Form 982(a)(15.3); see Appendix D); or
- b. Deposition Subpoena for Personal Appearance and Production of Documents and Things (Judicial Council Form 982(a)(15.4); see Appendix E).

Serve Subpoena on Nonparty Deponent

Personally serve subpoena on nonparty deponent *in sufficient time* to allow (CCP §2020.220(a)):

- a. Reasonable time to travel to deposition; and
- b. Reasonable opportunity for the witness to locate and produce any designated documents and things.

WITNESS FEES

When Paid

At the option of the party noticing the deposition, payment of witness fees and mileage must be made to the deponent when (CCP §2020.230):

- a. The subpoena is served; or
- b. The deponent appears for the deposition.

Amount

Current fees and mileage are \$35 per day and \$0.20 per mile. Govt C §68093.

WHAT TO SERVE ON PARTIES

Serve notice of deposition on *all* parties *and* copy of the deposition subpoena that was personally served on the nonparty deponent at least (CCP §§2025.210-2025.280, 2016.050, 1013):

- a. **10 days** before deposition, if personally served;
- b. **15 days** before deposition, if served by mail to an address within California;

- c. **20 days** before deposition, if served by mail to an address outside California but within the United States; or
- d. **30 days** before deposition, if served by mail to an address outside the United States.

#### NOTE

The above extensions of time apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

#### NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

### PRODUCTION OF BUSINESS RECORDS ONLY

#### DEADLINE FOR SERVING SUBPOENA BEFORE TRIAL

To schedule a deposition before the discovery cutoff (CCP §§2020.410, 2024.020(a)):

- a. Issue subpoena at least **50 days** before trial (30 day cutoff plus 20 days after issuance); and
- b. Serve subpoena at least **45 days** before trial (30 day cutoff plus 15 days if personally served).

#### SCHEDULE DEPOSITION

Use Mandatory Judicial Council Form

You must use the Judicial Council form of deposition subpoena for production of business records (Judicial Council Form 982(a)(15.2); see Appendix F).

Serve Subpoena on Nonparty Deponent

Personally serve deposition subpoena for the production of business records on the custodian of records, with deposition scheduled *no earlier* than the *later* of (CCP §§2020.410, 2020.220):

- a. **20 days** after deposition subpoena is issued; or
- b. **15 days** after it was served.

Prepare Declaration

The records must be accompanied by an affidavit or declaration to be signed by the custodian of records or other qualified witness as required by Evid C §1561.

#### WITNESS FEES

The deposition subpoena for the production of business records must be accompanied, whether or not demanded, by a payment in cash or check of the \$15 witness fee required by Evid C §1563(b)(6). CCP §2020.230. On procedures for paying other costs incurred by custodian of records, see Evid C §1563(b)(1)-(6).

#### WHAT TO SERVE ON PARTIES

Serve copy of subpoena only, in lieu of serving a notice of deposition, on all parties (CCP §§2025.220(b), 2025.240, 2016.050, 1013) at least:

- a. **10 days** before deposition, if personally served;
- b. **15 days**, if served by mail to an address within California;

- c. **20 days**, if served by mail to an address outside California but within the United States; or
- d. **30 days** if served by mail to an address outside the United States.

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

#### NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

### PRODUCTION OF CONSUMER OR EMPLOYEE RECORDS

#### DEADLINE FOR SCHEDULING CONSUMER OR EMPLOYEE RECORDS DEPOSITION

To schedule a consumer or employee records deposition before the 30-day discovery cutoff (CCP §§2020.410, 2024.020(a)):

a. Issue deposition subpoena at least **60 days** before trial (see Schedule Deposition, below):

- (1) If you require the witness to testify, use the Judicial Council form of deposition subpoena for personal appearance and production of documents and things (see Appendix E); or
- (2) When you need only the personal or employment records, use the deposition subpoena for production of business records (see Appendix F);

b. Because you must serve consumer or employee at least 5 days before you serve witness, serve consumer or employee the notice to consumer or employee, copy of subpoena, and proof of service at least **50 days** before trial, plus additional time if served by mail (see CCP §§1985.3(b)(2), 1985.6(b)(2), 1013); and

c. Because production date must be no sooner than 20 days after the issuance of the subpoena or 15 days after service, whichever is later, personally serve subpoena on witness (*i.e.*, the custodian of records) at least **45 days** before trial (see Serve Witness, below).

#### NOTE

Notice to a consumer or employee, and service of other documents under CCP §1985.3(b) or §1985.6(b) are not required if the consumer or employee is the subpoenaing party and is the only subject of subpoenaed records. CCP §§1985.3(l), 1985.6(k).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if parties and consumer or employee are personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

#### NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §§1985.3(b), 1985.6(b), 1013(e).

#### SCHEDULE DEPOSITION

The production date must be no earlier than the later of (CCP §2020.410):

- a. **20 days** after issuance of subpoena; or
- b. **15 days** after service of deposition subpoena.

#### PREPARE NOTICE TO CONSUMER OR EMPLOYEE

Use Mandatory Judicial Council Form

You must use the Judicial Council form of notice to consumer or employee (Judicial Council Form 982(a)(15.5); see Appendix

G.

## NOTE

Notice to a consumer or employee, and service of other documents under CCP §1985.3(b) or §1985.6(b), are not required if the consumer or employee is the subpoenaing party and is the only subject of subpoenaed records. CCP §§1985.3(l), 1985.6(k).

### Content of Notices

The Judicial Council form of notice to consumer or employee indicates that (see CCP §§1985.3(e), (g), 1985.6(e)-(f)):

- a. Personal or employment records are being sought from the witness named in the subpoena;
- b. Consumer or employee has a right to object to the production of personal or employment records, *i.e.*:
  - (1) A party consumer or employee may file a motion to quash or modify the subpoena, and must give notice of that motion to the witness and deposition officer named in the subpoena at least 5 days before the production date; and
  - (2) A nonparty consumer or employee may serve a written objection on the party requesting the records, on the deposition officer, and on the witness before the date of production.

## NOTE

If the party requesting records will not agree in writing to cancel or limit the subpoena, the consumer or an employee should consult an attorney about protecting privacy rights.

## WHAT TO SERVE ON CONSUMER OR EMPLOYEE

Serve on consumer or employee (CCP §§1985.3(b), 1985.6(b)):

- a. Copy of subpoena;
- b. Affidavit in support of subpoena, if any;
- c. Notice to consumer or employee; and
- d. Proof of service on consumer or employee.

## WHEN TO SERVE

Serve consumer or employee before *both* dates below, subject to CCP §2020.410:

- a. Not less than (CCP §§1013, 1985.3(b)(2), 1985.6(b)(2)):
  - (1) **10 days** before the production date specified in the subpoena, if personally served;
  - (2) **15 days** if the subpoena is mailed to an address in California;
  - (3) **20 days** if mailed to an address outside California but in the United States; or
  - (4) **30 days** if mailed to an address outside the United States; and
- b. At least (CCP §§1013, 1985.3(b)(3), 1985.6(b)(3)):
  - (1) **5 days** before service on *witness* if notice is personally served on the consumer or employee;
  - (2) **10 days** before service on *witness* if notice is mailed to consumer or employee at an address in California;
  - (3) **15 days** before service on *witness* if mailed to consumer or employee at an address outside California but in the United States; or
  - (4) **25 days** before service on *witness* if mailed to consumer or employee at an address outside the United States.

## NOTE

You must serve witness as provided in CCP §2020.410, *i.e.*, at least 15 days before production date as long as this is at least 20 days after subpoena issued (and consumer/employee 5 days before you serve witness). CCP §§1985.3(d), 1985.6(d).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

#### SERVE WITNESS

Personally serve on witness at least **15 days** before production date, as long as this is at least 20 days after subpoena was issued, *both* (CCP §2020.410(c)-(d)):

a. Subpoena; and

b. Either:

(1) Proof of service of the notice to the consumer or employee described above); or

(2) Written authorization of consumer or employee to release personal records described in CCP §§1985.3(c), 1985.6(c).

NOTE

You must serve the consumer or employee at least 5 days before you serve the witness. CCP §§1985.3(b)(3), 1985.6(b)(3).

#### WHAT TO SERVE ON PARTIES

Serve a notice of deposition and copy of subpoena (or copy of subpoena only if no personal appearance is required) on *all* parties at least (CCP §§2025.220, 2025.240, 2016.050, 1013):

a. **10 days** before deposition, if personally served;

b. **15 days**, if served by mail to an address within California;

c. **20 days**, if served by mail to an address outside California but within the United States; or

d. **30 days**, if served by mail to an address outside the United States.

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

*Further Research:* See Civil Discovery, chap 5.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 38. REQUEST SUPPLEMENTAL INTERROGATORY RESPONSES

STEP 38. REQUEST SUPPLEMENTAL INTERROGATORY RESPONSES

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PROPOUND SUPPLEMENTAL INTERROGATORY

*Once* after initial trial setting, you may propound a supplemental interrogatory (CCP §2030.070):

- a. Directed to each party;
- b. Asking for any later-acquired information bearing on all answers previously made by that party in response to interrogatories.

NOTE

You may also request supplemental responses *twice* before the initial trial setting. See CCP §2030.070. Parties have no duty under California law to amend or supplement interrogatory responses to include newly discovered information. *Biles v Exxon Mobil Corp.* (2004) 124 CA4th 1315, 1328, 22 CR3d 282.

DEADLINE FOR SERVING PARTY

*Personally* serve the supplemental interrogatory **61 days** before trial in order to receive responses by discovery cutoff of CCP §2024.020(a). CCP §2030.260.

NOTE

Add additional days if you serve the interrogatory by mail.

DEADLINE FOR RESPONDING PARTY

Original Responses

Serve verified response on all parties within (CCP §§2030.260, 1013):

- a. **30 days** after service if interrogatories were personally served;
- b. **35 days** if they were served by mail to an address within California;
- c. **40 days** if they were served by mail to an address outside California, but inside the United States; or
- d. **50 days** if they were served by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

AMENDED RESPONSES

Any time after initial responses, serve amended responses. CCP §2030.310(a).

*Further Research:* See Civil Discovery, chap 7.



**Source:** Civil Litigation/Preparing for Trial (Action Guide)/120 to 60 Days Before Trial/STEP 39. BRING MOTION TO CURE POSSIBLE JURY BIAS

STEP 39. BRING MOTION TO CURE POSSIBLE JURY BIAS

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REVIEW CASE

Determine whether there is a possibility that the jury panel will be unduly biased because of, *e.g.*, the nature of the case, or the notoriety of any of the parties.

CONSIDER EXPERT SURVEY

If you anticipate possible jury bias, consider an expert survey of community bias to (see *Browne, Effective Voir Dire*, 11 LA Law 17-20 (Feb. 1989)):

- a. Support motion for change in venue (see *Motion for Change of Venue*, below); and/or
- b. Help you prepare questions to recognize jury bias.

REMEDIES IF JURY BIAS DETERMINED

Motion for Change of Venue

Prepare a motion for change of venue setting forth evidentiary facts showing that an impartial trial cannot be had in your case (CCP §397(b)), including, *e.g.*:

- a. Evidence that dissemination of potentially prejudicial material has made a fair trial unlikely (see *People v Salas* (1972) 7 C3d 812, 817, 103 CR 431); and
- b. Your expert's finding about jury bias.

NOTE

You should also keep in mind that a change in venue may be possible, or even desirable, if the convenience of witnesses and the ends of justice would be promoted by such a change. See CCP §397(c).

Motion for Continuance

Prepare a motion for continuance of the trial to allow public attention to subside if jury bias is a result of pretrial publicity.

NOTE

Courts disfavor continuances of trial in civil cases, except on an affirmative showing of good cause. Cal Rules of Ct 3.1332(c). See step 1, above; see also Cal Rules of Ct 3.1335.

Trial by Court

You may waive your demand for a trial by jury and request that the judge hear and decide the case.

VOIR DIRE

If you proceed with a jury trial, prepare your voir dire questions with careful attention to discovering and eliminating bias.

**Further Research:** See Civ Proc During Trial, chap 8.

60 to 40 Days Before Trial

## STEP 40. FILE MOTION TO SEVER OR BIFURCATE FOR TRIAL

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### WHEN APPROPRIATE

A motion to sever or bifurcate for trial is appropriate when your case involves issues or causes of action that should be tried *separately* to [CCP §1048\(b\)](#); see also [CCP §§592, 597, 597.5, 598](#); [CC §3295](#); [Evid C §320](#):

- a. Further convenience, expedition, and economy; or
- b. Avoid prejudice.

**Example:** You would do this to try any equitable issue (*e.g.*, set aside a foreclosure sale) before any legal issue (*e.g.*, damages for fraud or breach of contract). See *Raedeke v Gibraltar Sav. & Loan Ass'n* (1974) 10 C3d 665, 671, 111 CR 693.

### If Punitive Damages Sought

When a case involves the potential for punitive damages, [CC §3295\(d\)](#) provides that a defendant may ask the court to preclude "admission of evidence of that defendant's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that a defendant is guilty of malice, oppression, or fraud."

### NOTE

Check local rules; trial courts frequently prefer motions under [CC §3295\(d\)](#) to be made in limine.

### DEADLINE FOR COURT RULING ON [CCP §598](#) MOTION

The court may rule on a party's [CCP §598](#) motion to bifurcate no later than ([CCP §598](#)):

- a. The close of the pretrial conference in cases in which a pretrial conference is held; or
- b. In other cases, no later than 30 days before the trial date.

### NOTE

[CCP §598](#) requires a ruling (not merely a hearing) by the close of the pretrial conference or 30 days before trial, whichever is applicable.

### WHEN TO SERVE [CCP §598](#) MOTION

A motion to bifurcate under [CCP §598](#) must be served at least 16 court days before the hearing date, if personally served. ([CCP §1005](#); add applicable extension of time according to method of service).

### Check Local Rules

You might successfully ask the court to sever or bifurcate up to the time of trial, but it is generally better to make the motion as soon as possible. Trial courts may have their own procedures and deadlines for motions to bifurcate. See, *e.g.*, Los Angeles Ct R 16.10(a) (eminent domain cases).

### DEADLINE TO MAKE OTHER MOTIONS

On making motions to consolidate or coordinate cases, see [Civ Proc Before Trial, chaps 43-44](#).

**Further Research:** See [CCP §§1048\(b\), 592, 597, 597.5](#); [CC §3295](#); [Evid C §320](#).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/60 to 40 Days Before Trial/STEP 41. IF DEFENDANT, DEMAND BILL OF PARTICULARS

STEP 41. IF DEFENDANT, DEMAND BILL OF PARTICULARS

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#### WHEN APPROPRIATE

If the complaint does not set forth the items of the account on which a case is based, defendant may demand a copy of the account at any time. CCP §454.

#### PLAINTIFF'S DEADLINE TO RESPOND

Within **10 days** after the demand, plaintiff must respond with a copy of the account. CCP §454.

#### WHEN TO SERVE DEMAND

Serve demand for bill of particulars at least **41 days** before trial, if personally served, to require plaintiff's response by the 30-day discovery cutoff (CCP §2024.020(a)) and:

- a. Add applicable extension of time according to method of service (see CCP §1013(a)); and
- b. Allow this period of time because, even though the bill of particulars procedure is not part of the Civil Discovery Act (CCP §§2016.010-2036.050), the CCP §2024.020(a) discovery cutoff may still apply.

*Further Research:* See Civ Proc Before Trial, chap 30.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/60 to 40 Days Before Trial/STEP 42. SUPPLEMENT YOUR DISCOVERY RESPONSES

STEP 42. SUPPLEMENT YOUR DISCOVERY RESPONSES

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EXAMINE YOUR DISCOVERY RESPONSES

It is a good idea well before trial to confirm whether:

- a. You *now* have any information that was not disclosed in response to interrogatories or requests to produce; and
- b. Your previous discovery responses remain accurate.

NOTE

If you amend an interrogatory response, the opposing party may move for an order that the initial answer to the interrogatory be deemed binding for the purpose of the pending action. CCP §2030.310(b)-(c).

SUPPLEMENT RESPONSES, IF APPROPRIATE

You *may* serve an amended discovery response without leave of court containing information (CCP §2030.310(a)):

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

NOTE

A party has no duty under California law to amend or supplement interrogatory responses to include newly discovered information, even if a party reserves the right (or otherwise promises) to do so. *Biles v Exxon Mobil Corp.* (2004) 124 CA4th 1315, 1328, 22 CR3d 282.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/60 to 40 Days Before Trial/STEP 43. EXCHANGE EXPERT WITNESS INFORMATION

STEP 43. EXCHANGE EXPERT WITNESS INFORMATION

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PRODUCE EXPERT INFORMATION

If demand for simultaneous exchange of expert witness information has been made ([CCP §2034.210](#)):

- a. On or before the date set for exchange (either **20 days** after service of demand or **50 days** before initial trial date, whichever is closer to trial; see [step 36](#), above) produce your information on your expert witnesses ([CCP §§2034.230-2034.260](#));
- b. Within **20 days** after exchange, submit supplemental list ([CCP §2034.280](#)); and
- c. Sufficiently in advance of expert discovery cutoff to permit deposition of expert you wish to add, move to:
  - (1) Augment your expert witness list ([CCP §§2034.610-2034.630](#));
  - (2) Amend your expert witness declaration ([CCP §§2034.610-2034.630](#)); or
  - (3) Submit a tardy expert witness list. [CCP §§2034.710-2034.730](#).

NOTE

When it comes to issues that both sides anticipate will be disputed at trial, you cannot reserve the right to designate experts in the initial exchange, wait to see who the opposition designates, and then name an expert as a purported rebuttal witness. *Fairfax v Lord* (2006) 138 CA4th 1019, 41 CR3d 850.

WHAT TO INCLUDE

Basic Information

Include names and addresses of any experts whose testimony you will offer. [CCP §2034.260\(b\)](#).

Your Declaration

If expert is your client's employee, or has been retained by you for purposes of forming and expressing an opinion, provide your declaration setting forth ([CCP §§2034.210\(b\)](#), [2034.260\(c\)](#)):

- a. Expert's qualifications;
- b. General substance of testimony expert is expected to give;
- c. A statement of expert's hourly and daily fee for providing deposition testimony and for consulting with retaining attorney;
- d. That expert has agreed to testify at trial; and
- e. That expert will be sufficiently familiar with the pending case to submit to a meaningful oral deposition.

Reports

If expert reports have also been demanded, provide all *discoverable* reports and writings, if any, made by any of your designated experts. [CCP §2034.270](#).

NOTE

Describe the anticipated substance of the expert's testimony in broad categories. See *Bonds v Roy* (1999) 20 C4th 140, 83 CR2d 289 (trial court order properly excluded expert testimony on subject that was not disclosed in expert witness declaration).

**Further Research:** See [Civil Discovery, chap 11](#); Handling Expert Witnesses.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/60 to 40 Days Before Trial/STEP 44. NOTICE EXPERT WITNESS DEPOSITIONS

STEP 44. NOTICE EXPERT WITNESS DEPOSITIONS

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CONSIDER LIMITED TIME AVAILABLE

You normally have only **35 days** after you exchange expert witness lists to notice and depose a disclosed expert witness (CCP §§2034.220, 2016.060) because:

- a. Date for exchange of expert witness lists is typically **50 days** before the *initial* trial date (CCP §2034.230); and
- b. You must complete expert witness discovery **15 days** before the *initial* trial date. CCP §2024.030.

DEADLINE TO SERVE NOTICE OF DEPOSITION

To complete depositions **15 days** before the *initial* trial date, serve notice of deposition on all parties (CCP §§2024.030, 2025.210-2025.280, 2034.460, 2016.050, 1013):

If Personally Served

At least **25 days** before trial; or

If Served by Mail

Under CCP §§2025.270, 2034.410, 1013:

- a. **30 days** before trial if you serve by mail to an address within California;
- b. **35 days** if you serve by mail to an address outside California but within the United States; or
- c. **45 days** if you serve by mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

Tender Expert Witness Fee

To require a party to produce an expert witness for deposition, the deposition notice must be accompanied by tender of the expert's fee. CCP §2034.460.

DETERMINE ORDER OF EXPERT DEPOSITIONS

When there are two or more expert witnesses on an issue, determine whether you want yours to be deposed first. If your expert goes first:

- a. The opposing expert can take your expert's testimony into account during his or her own deposition; but
- b. The tradeoff is that you can depose the opposing expert about his or her criticisms of your expert's approach.

*Further Research:* See Civil Discovery chap 11; Handling Expert Witnesses.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 45. SERVE NOTICE ON PARTIES TO ATTEND TRIAL AND BRING DOCUMENTS

40 to 20 Days Before Trial

STEP 45. SERVE NOTICE ON PARTIES TO ATTEND TRIAL AND BRING DOCUMENTS

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PREPARE NOTICE

Prepare notice requiring personal attendance and production of records for (CCP §1987(b)-(c)):

- a. Party;
- b. Officer, director, or managing agent of party.

*Form:* See Civ Proc During Trial §4.70.

DEADLINE TO SERVE NOTICE FOR ATTENDANCE AND DOCUMENTS

You must serve notice for parties to attend trial and bring documents at least:

If Personally Served

**20 days** before trial; or

If Served by Mail

Under CCP §§1987(c), 1013:

- a. **25 days** before trial, if you mail to an address within California;
- b. **30 days** before trial, if you mail to an address outside California but within the United States;
- c. **40 days** before trial, if you mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

DEADLINE TO SERVE NOTICE FOR ATTENDANCE ONLY

See step 58, below.

*Further Research:* See Civ Proc During Trial, chap 4.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 46. SERVE SUBPOENA ON WITNESSES FOR TRIAL

STEP 46. SERVE SUBPOENA ON WITNESSES FOR TRIAL

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USE APPROPRIATE SUBPOENA FORM

Witness Attendance

To compel nonparty witness to attend and testify at trial or other nondeposition proceeding, serve Civil Subpoena for Personal Appearance at Trial or Hearing (Judicial Council Form 982(a)(15); see [Appendix I](#)). [CCP §§1985, 1985.1, 1985.2](#).

*Example:* Eyewitness testifies at trial.

Witness Attendance and Production of Documents (Subpoena Duces Tecum)

To compel nonparty witness to testify and produce evidence at trial or other nondeposition proceeding, serve Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing (Judicial Council Form 982(a)(15.1); see [Appendix J](#)). [CCP §1985, 1985.1, 1985.2](#).

*Example:* Eyewitness testifies at trial and produces photographs of accident.

Records Production Only (Subpoena Duces Tecum)

To compel a custodian of records or other qualified witness, who does not need to attend or testify, to produce records and things at trial or other nondeposition proceeding, serve Judicial Council Form 982(a)(15.1) – Civil Subpoena (Duces Tecum), reproduced in [Appendix J](#), with box 3b marked to indicate that the witness is not required to appear and testify. [CCP §1987.3; Evid C §§1560-1566](#).

*Example:* Hospital produces plaintiff's medical records for use at trial, but no one from hospital testifies.

SERVE AFFIDAVIT WITH SUBPOENA DUCES TECUM

A copy of an affidavit or declaration must be served with a civil subpoena duces tecum that ([CCP §1985\(b\)](#)):

- a. Shows good cause for production of the matters and things described in the subpoena;
- b. Specifies the exact matters or things desired to be produced;
- c. Sets forth in full detail the materiality of those matters and things to the issues involved in the case; and
- d. States that the witness has the desired matters or things in his or her possession or under his or her control.

When to Serve

Serve within "reasonable time" for witness to prepare and travel to place of attendance. [CCP §1987\(a\)](#).

NOTE

While "reasonable time" is not defined, practicing attorneys consider a reasonable time frame for service of a deposition subpoena on a nonparty witness to be at least **15 days** before the scheduled deposition date, as long as this is at least **20 days** after issuance of the subpoena. See note under Depositions Requiring Nonparty's Appearance, in [step 37](#), above). Thus, it is probably a good idea to permit more time for a witness to prepare for, to appear, and to testify at trial than seems reasonable for attending a deposition.

FOR CONSUMER RECORDS
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WHAT TO SERVE CONSUMER

Serve on consumer (CCP §1985.3(b)):

- a. Copy of the civil subpoena duces tecum (see Appendix J);
- b. Copy of affidavit in support of subpoena, if any (see back of subpoena form in Appendix J);
- c. Notice to consumer or employee as required by CCP §§1985.3(e) (see Judicial Council Form 982(a)(15.5) in Appendix G); and
- d. Proof of service (see back of notice form in Appendix G).

#### NOTE

Notice to a consumer under CCP §1985.3, and service of other documents specified in CCP §1985.3(b), are not required if the consumer is the subpoenaing party and is the only subject of subpoenaed records. CCP §1985.3(l).

#### DEADLINE TO SERVE CONSUMER

Serve consumer with subpoena and notice required by CCP §1985.3(e) before *both* of the following dates, subject to CCP §2020.410:

a. Not less than (CCP §§1013, 1985.3(b)(2)):

- (1) **10 days** before production date specified in subpoena, if personally served (*i.e.*, 10 days before trial);
- (2) **15 days** if subpoena is mailed to an address within California;
- (3) **20 days** if mailed to an address outside California but within the United States;
- (4) **30 days** if mailed to an address outside the United States; or
- (5) **10 days plus 2 court days** before production date specified in subpoena if served by fax, express mail, or other form of overnight delivery (see note, below); and

b. At least (CCP §§1013, 1985.3(b)(3)):

- (1) **5 days** before service on *witness* if notice is personally served on *consumer*;
- (2) **10 days** before service on *witness* if notice is mailed to *consumer* at an address within California;
- (3) **15 days** before service on *witness* if mailed to *consumer* at an address outside California but within the United States;
- (4) **25 days** before service on *witness* if mailed to *consumer* at an address outside the United States; or
- (5) **5 days plus 2 court days** before service on *witness* if served on *consumer* by fax, express mail, or other method of overnight delivery (see note, below).

**Example:** If you intend to subpoena consumer records for the first day of trial (civil subpoena duces tecum):

- The consumer notice statute requires you to serve consumer at least 10 days before trial (CCP §1985.3(b)(2)), and at least 5 days before you serve witness (CCP §1985.3(b)(3)), plus more time if service is by mail; but
- You must also serve witness in sufficient time to locate and produce the records (CCP §1985.3(d)), subject to the provisions in CCP §2020.410; and
- If you serve witness on the 15th day before trial, serve consumer on the 20th day before trial *plus* more time if serving consumer by mail, because:

CCP §2020.410 requires service on witness at least 15 days before trial date (as long as this is at least 20 days after subpoena issued); and

Consumer must be served at least 5 days before witness. Therefore consumer must be served 20 days before trial.

#### NOTE

Do not serve by facsimile unless the parties and the intended recipient of the service have agreed in writing to service by facsimile. See CCP §1013(e).

## SERVING THE WITNESS

### What to Serve Witness

Serve a witness with subpoena *plus* either (CCP §§1985.3(c)):

- (1) Proof of service on consumer of documents listed in CCP §1985.3(b); or
- (2) Consumer's written authorization to release personal records. CCP §1985.3(c)(2).

### What to Serve Telephone Corporation

Serve a telephone corporation that is a public utility (Pub Util C §216) with (CCP §1985.3(f)):

- (1) Subpoena; plus
- (2) Consent to release records signed by consumer. Pub Util C §2891.

### When to Serve Witness

Serve subpoena in sufficient time to allow witness reasonable time to locate and produce the records or copies, subject to the time frame in CCP §2020.410, *i.e.*, production date should be at least 20 days after issuance of subpoena or at least 15 days after subpoena is served, whichever is later. CCP §1985.6(d).

### Proof of Service

Keep original subpoena and proof of service for filing if, *e.g.*, witness fails to appear and you must ask court to order witness's compliance. See Cal Rules of Ct 3.250.

**Further Research:** See Civ Proc During Trial, chap 4.

FOR EMPLOYEE RECORDS

## WHAT TO SERVE EMPLOYEE

Serve on employee (CCP §1985.6(b)):

- a. Copy of the civil subpoena duces tecum (see Appendix J);
- b. Copy of affidavit in support of subpoena, if any (see back of subpoena form in Appendix J);
- c. Notice to consumer or employee as required by CCP §1985.6(e) (see Judicial Council Form 982(a)(15.5) in Appendix G); and
- d. Proof of service (see back of notice form in Appendix G).

## NOTE

Notice to an employee under CCP §1985.6, and service of the other documents specified in CCP §1985.6(b), are not required if the employee is the subpoenaing party and is the only subject of subpoenaed records. CCP §1985.6(k).

## DEADLINE TO SERVE EMPLOYEE

Serve employee before *both* dates below, subject to CCP §2020.410:

- a. Not less than (CCP §§1013, 1985.6(b)(2)):
  - (1) **10 days** before production date specified in subpoena, if personally served;

- (2) **15 days** if subpoena is mailed to an address within California;
- (3) **20 days** if mailed to an address outside California but within the United States;
- (4) **30 days** if mailed to an address outside the United States; or
- (5) **10 days plus 2 court days** before production date specified in subpoena if served by fax, express mail, or other form of overnight delivery (see note, below); and

b. At least (CCP §§1013, 1985.6(b)(3)):

- (1) **5 days** before service on *witness* if notice is personally served on *employee*;
- (2) **10 days** before service on *witness* if notice is mailed to *employee* at an address in California;
- (3) **15 days** before service on *witness* if mailed to *employee* at an address outside California but within the United States;
- (4) **25 days** before service on *witness* if mailed to *employee* at an address outside the United States; or
- (5) **5 days plus 2 court days** before service on *witness* if served on *employee* by facsimile, express mail, or other method of overnight delivery (see note, below).

**Example:** If you intend to subpoena employment records for the first day of trial (civil subpoena duces tecum):

- The employee notice statute requires you to serve employee at least 10 days before trial (CCP §1985.6(b)(2)), and at least 5 days before you serve witness (CCP §1985.6(b)(3)), plus more time if service is by mail; but
- You must also serve witness in sufficient time to locate and produce the records (CCP §1985.6(d)), subject to the provisions in CCP §2020.410; and
- If you serve witness on the 15th day before trial, serve employee on the 20th day before trial, *plus* more time if serving employee by mail, because:

CCP §2020.410 requires service on witness at least 15 days before trial date (as long as this is at least 20 days after subpoena issued); and

Employee must be served at least 5 days before witness.

## NOTE

Do not serve by facsimile unless the parties and the intended recipient of the service have agreed in writing to service by facsimile. CCP §1013(e). Section 1013(e) does not define the "parties" who must agree to service by facsimile, but it should be presumed that agreement between the sending and receiving parties is what is necessary to comply with the statute.

## SERVING THE WITNESS

### What to Serve Witness

Serve witness with subpoena *plus* either (CCP §§1985.6(c)):

- a. Proof of service on employee of documents listed in CCP §1985.6(e); or
- b. Employee's written authorization to release personal records. CCP §1985.6(c)(2).

### When to Serve Witness

Serve subpoena in sufficient time to allow witness reasonable time to locate and produce the records or copies, subject to the time frame in CCP §2020.410, *i.e.*, production date should be at least 20 days after issuance of subpoena or at least 15 days after subpoena is served, whichever is later. CCP §1985.6(d).

### Proof of Service

Keep original subpoena and proof of service for filing if, *e.g.*, witness fails to appear and you must ask court to order witness's compliance. See Cal Rules of Ct 3.250.

*Further Research:* See Civ Proc During Trial, chap 4.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 47. MAKE SURE DISCOVERY IS COMPLETE OR OBTAIN EXTENSION

STEP 47. MAKE SURE DISCOVERY IS COMPLETE OR OBTAIN EXTENSION

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DEADLINE

**30 days** before trial, all discovery (except expert witness exchange and depositions) must be complete, *e.g.*, answers and responses to interrogatories served, depositions begun. CCP §§2024.010, 2024.020(a).

SEEK STIPULATION

If all parties and witnesses agree, obtain stipulation *in writing* to extend time for completing discovery. CCP §2024.060.

SEEK COURT ORDER

Move for leave from the court to extend discovery cutoff or reopen discovery, setting forth (CCP §2024.050):

- a. That you have made a reasonable and good faith effort to obtain an extension or resolve the problem with opposing parties;
- b. The reasons you need the extension;
- c. The reasons you need discovery;
- d. Your diligence in seeking discovery earlier, and why you did not complete discovery earlier;
- e. Whether further discovery will delay trial or prejudice any party; and
- f. If the initial trial date has passed, the time elapsed between the initial trial date and the date of the motion.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 48. SUPPLEMENT EXPERT DISCLOSURE

## STEP 48. SUPPLEMENT EXPERT DISCLOSURE

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### DEADLINE

**20 days** after exchange, submit supplemental list. CCP §2034.280.

### INFORMATION TO PRODUCE

The procedures for supplementing expert disclosure information are the same as for original exchange of information. See step 43, above; CCP §§2034.280, 2034.260.

### MAKE EXPERT AVAILABLE FOR DEPOSITION

If you disclose an expert by way of a supplemental list under CCP §2034.280, you must make that expert available *immediately* for deposition, even if discovery cutoff has already passed. CCP §2034.280.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 49. MOVE TO COMPEL DISCOVERY

STEP 49. MOVE TO COMPEL DISCOVERY

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DEADLINE FOR HEARING

Hearing on motion to compel must take place on or before the **15th day** before the *initial* trial date. CCP §2024.020(a).

DEADLINE TO SERVE MOTION

You must serve the motion at least **16 court days** before the hearing date, if personally served (add applicable extension of time according to method of service). See CCP §§2024.020(a), 1005.

NOTE

Expert witness motions may be served and heard later. See step 56, below.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 50. PREPARE FOR MANDATORY SETTLEMENT CONFERENCE

STEP 50. PREPARE FOR MANDATORY SETTLEMENT CONFERENCE

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MANDATORY SETTLEMENT CONFERENCE

On the court's own motion or at the request of any party, a settlement conference may be held by the court. Cal Rules of Ct 3.1380(a).

REVIEW FILE

Review file to:

- a. Gather all financial information relating to settlement, *e.g.*, costs, damages (see step 24, above); and/or
- b. Reevaluate case in light of your discovery, investigation, and costs incurred since your last case evaluation.

COMMUNICATE WITH CLIENT

Discuss with client:

- a. The amount available/necessary to settle case *before* trial;
- b. That settlement conferences are mandatory, and how conferences generally are conducted in your county (*e.g.*, attorneys meet with the judge, clients wait in the hall, judge talks to client); and
- c. That client and persons with full authority to settle must personally attend the settlement conference. Cal Rules of Ct 3.1380(b).

NOTIFY INSURANCE CARRIERS

If an insurance company is providing your client's defense:

- a. Notify all potential insurance carriers for your client; and
- b. Arrange for representatives to attend the conference.

FILE SETTLEMENT CONFERENCE STATEMENT

At least 5 days before the conference, prepare and file a statement setting forth (Cal Rules of Ct 3.1380(c)):

- a. Settlement demand or offer;
- b. Itemization of special and general damages;
- c. Discussion of all facts and law pertinent to issues of liability and damages; and
- d. Other information required by local rule. See, *e.g.*, Los Angeles Ct R 7.9(e); Santa Clara Ct R 6B.

**Further Research:** See Civ Proc Before Trial, chap 40.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 51. COMPLETE TRIAL PREPARATION; PREPARE TRIAL BRIEF AND MOTIONS IN LIMINE

STEP 51. COMPLETE TRIAL PREPARATION; PREPARE TRIAL BRIEF AND MOTIONS IN LIMINE

---

COMPLETE TRIAL PREPARATION

If you have not already done so, using your trial system:

- a. Review case and organize files (see [step 27](#), above);
- b. Organize discovery (see [steps 27, 31](#), above);
- c. Organize documents (see [step 31](#), above); and
- d. Complete research. See [step 28](#), above.

PREPARE TRIAL BRIEF

Based on your research, prepare a trial brief:

- a. Briefly setting forth the facts of the case and proposed testimony for the trial judge's review before trial begins; and
- b. Stating key legal issues and applicable law on each issue.

PREPARE LEGAL MEMORANDUMS

If there are other legal or evidentiary issues that *may* arise at trial (*e.g.*, whether plaintiff is entitled to present evidence on punitive damages), prepare legal memorandums for your use at trial.

PREPARE MOTIONS IN LIMINE

If you see that a major evidentiary question is unsettled (*e.g.*, whether court should admit parole evidence or exclude cumulative evidence), prepare a written motion in limine that will:

- a. Ask the judge to exclude or admit the evidence; and
- b. Set forth the legal basis for your motion.

**Further Research:** See [Civ Proc During Trial, chap 7](#); [Hyatt v Sierra Boat Co. \(1978\) 79 CA3d 325, 337, 145 CR 47](#).

NOTE

If you wait to object orally when opposing counsel tries to introduce the evidence at trial, the court will be without benefit of written authorities and the time to make a thoughtful ruling.

**Further Research:** For discussion of in limine motions, see [Civ Proc During Trial, chap 7](#); [Trial Objections, chap 2](#).

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 52. MEET WITH WITNESSES AND CLIENT, AND PREPARE FOR TESTIMONY

STEP 52. MEET WITH WITNESSES AND CLIENT, AND PREPARE FOR TESTIMONY

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PREPARE WITNESSES

For each witness you will call to testify (and client if client will testify):

- a. Conduct interview;
- b. Provide with relevant depositions or declaration for his or her review;
- c. Show any exhibits, diagrams, charts, or photos you will ask about on direct examination;
- d. Discuss possible privileged information and how you plan to handle it, *e.g.*, you will object to questions that violate your client's marital privilege;
- e. Explain how you will use deposition, if at all, *e.g.*, deposition will or will not be read during examination of witness (see [CCP §2025.620](#));
- f. Determine whether:
  - (1) Witness should review any writing *before* trial, which opposing party may then be entitled to see (see [Evid C §771](#); [Laying a Foundation](#)); and/or
  - (2) You will need to refresh the witness's recollection at trial, and explain how that is done, *e.g.*, witness will be allowed to look at a prior statement or notes, which opposing party may then obtain (see [Evid C §771](#); [Laying a Foundation](#));
- g. Instruct on:
  - (1) How to answer questions, *e.g.*, tell the truth; and
  - (2) Anticipated lines of cross-examination; and
- h. Determine whether witness or client may be impeached, and any solution, *e.g.*, rehabilitating evidence. See [Effective Intro of Evidence, chap 34](#).

**Sample Form:** For sample letter explaining benefits of subpoenaing friendly witness, and for admonitions to give client before client testifies at trial, see [Appendix K](#).

PREPARE FOR EXPERT WITNESSES

Prepare for direct examination of your own witness and deposition/ cross-examination of other party's witness by:

- a. Reading all writings by other party's expert witness on relevant subjects;
- b. Obtaining trial transcripts or deposition transcripts reflecting all experts' testimony in other cases;
- c. Checking *Jury Verdicts Weekly* or similar publications to determine cases in which all experts have testified;
- d. Ascertaining from your expert what information or tests you might use to cross-examine opposing expert witness;
- e. Preparing hypothetical questions, if appropriate, and considering how they might be attacked;
- f. Reviewing with your expert information concerning:
  - (1) Your expert's qualifications as an expert; and
  - (2) Opposing party's expert's qualifications; and

g. Discussing the basis of your expert's opinion, and reviewing all documents on which your expert relies.

#### NOTE

Some courts require hypothetical questions to be submitted in writing before the expert testimony. See, *e.g.*, Los Angeles Ct R 8.85.

**Further Research:** See California Expert Witness Guide (2d ed Cal CEB 1991); Handling Expert Witnesses.

#### PREPARE YOUR CROSS-EXAMINATION

Prepare your cross-examination of other party's witnesses by:

- a. Outlining areas in which you wish to examine opposing party's witnesses and preparing alternate lines of examination to use, depending on answers witnesses give;
- b. Reviewing deposition testimony and documents you want to use as references, because inconsistencies can be extremely beneficial in impeaching a witness's credibility;
- c. Carefully examining all documents you or opposing party will introduce through opposing party's witnesses; and
- d. Preparing notice to produce and/or subpoenaing relevant documents in possession of witnesses or opposing party. See steps 45-46, above.

**Further Research:** See Civ Proc During Trial, chap 5; Laying a Foundation; Handling Expert Witnesses.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 53. PREPARE QUESTIONS FOR JURY VOIR DIRE AND JURY INSTRUCTIONS

STEP 53. PREPARE QUESTIONS FOR JURY VOIR DIRE AND JURY INSTRUCTIONS

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PREPARE JURY VOIR DIRE

Prepare for jury voir dire by:

- a. Analyzing characteristics for the ideal juror for your client's case, *e.g.*, young, unemployed, professional, retired;
- b. Preparing voir dire questions (CCP §222.5; Cal Rules of Ct 3.1540; see *Rousseau v West Coast House Movers* (1967) 256 CA2d 878, 882, 64 CR 655, for scope of voir dire; Cal Rules of Ct, Standards of J Admin 3.25 for sample questions);
- c. Setting up system to help you keep track of:
  - (1) Names of prospective jurors;
  - (2) Jurors' answers to voir dire; and
  - (3) Whether and when you want to challenge a juror; and
- d. Reviewing your rights to (CCP §§225-231):
  - (1) Challenge for cause; and
  - (2) Make peremptory challenges.

Submit Voir Dire Questions

In many courts you must submit your voir dire questions to the judge *before* trial, and you may be limited in the number of questions you may ask. See, *e.g.*, Los Angeles Ct R 8.20(a), (h).

JUROR QUESTIONNAIRES

May Be Provided

Some counties provide counsel with juror questionnaires before the voir dire process.

You May Prepare Your Own

You may also want to prepare your own questionnaire, depending on the nature and complexity of your issues.

PREPARE JURY INSTRUCTIONS

Prepare jury instructions by:

- a. Reviewing official Judicial Council Jury Instructions (CACI) (on approved form of civil jury instructions, see Cal Rules of Ct 2.1050, 2.1055); and
- b. Researching and preparing any special instructions and verdict forms.

NOTE

Be prepared to designate your proposed instructions before trial.

**Further Research:** See Civ Proc During Trial, chap 20.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 54. PREPARE OPENING STATEMENT AND CLOSING ARGUMENT

STEP 54. PREPARE OPENING STATEMENT AND CLOSING ARGUMENT

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PREPARE OPENING STATEMENT

Prepare your opening statement by:

- a. Outlining your statement;
- b. Considering exhibits you want to show to jury (get court's prior approval); and
- c. Deciding what harmful evidence to mention, *e.g.*, your client's preexisting condition, or history of alcohol abuse.

NOTE

Decide whether it is better for the jury to hear the harmful evidence from you or from the opposing party.

PREPARE CLOSING ARGUMENT

Prepare your closing argument by:

- a. Outlining your argument *before* beginning of trial;
- b. Developing argument "themes," *e.g.*, emphasize that the client is a hard worker who never had a ticket or accident before; and
- c. Considering:
  - (1) Exhibits to use;
  - (2) Jury instructions to argue; and
  - (3) Whether you need visual aids, *e.g.*, blackboard, overhead projector.

**Further Research:** See Civ Proc During Trial, chap 9 (opening statement) and Civ Proc During Trial, chap 19 (closing argument).

STEP 55. DEPOSIT JURY FEES

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DEADLINE TO POST JURY FEES

You risk waiving a jury trial if you do *not* deposit (*i.e.*, "post") fees at least:

Requesting Party

- a. In unlawful detainer cases, **5 days** before trial date (CCP §631(b), (d)(5)); or
- b. In other cases, **25 days** before trial date. CCP §631(b);

DETERMINE AMOUNT OF JURY FEES

Deposit Before Trial

Each party demanding a jury trial shall deposit advance jury fees, not to exceed \$150, with the court at least 25 days before trial. CCP §631(b).

NOTE

Local rules may prescribe the amount to deposit (see, *e.g.*, Sonoma Ct R 4.8(B) — \$150).

Deposits After Trial Commences

After the first day of trial, the parties demanding a jury trial must deposit with the court that day's fees and payment for mileage of the jury. CCP §631(c). Daily jury fees are:

- a. \$15 a day for each day's attendance (CCP §215(a)); and
- b. Unless a higher rate of mileage is provided by local ordinance, \$0.34 per mile for each mile actually traveled to court one way, *i.e.*, "in going only." CCP §215(c).

HOW TO DEPOSIT FEES

Present a check for the proper amount to the court clerk or the judge. CCP §631(b).

JURY FEES IN EMINENT DOMAIN ACTION

A party seeking condemnation must post fees regardless of who requested the jury. CCP §631.5.

REQUEST RELIEF IF JURY WAIVED

The court has discretion to allow a jury trial even after a party has waived a jury, *e.g.*, by failing to deposit the fees. CCP §631(e).

NOTE

It is good practice to make a motion for relief as soon as possible after waiver is discovered.

**Further Research:** See Civ Proc Before Trial, chap 41; Civ Proc During Trial, chaps 2, 8.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 56. MOVE TO EXCLUDE EXPERT TESTIMONY

## STEP 56. MOVE TO EXCLUDE EXPERT TESTIMONY

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### WHEN APPROPRIATE

Ask court to exclude from evidence a party's expert opinion, if that party has unreasonably failed to (CCP §2034.300):

- a. List that witness as an expert under CCP §2034.260;
- b. Submit an expert witness declaration;
- c. Produce reports and writings of expert witnesses under CCP §2034.270; or
- d. Make that expert available for deposition under CCP §§2034.410-2034.470.

### DEADLINE FOR HEARING

Hearing on motion to exclude expert testimony must take place on or before the 10th day before the *initial* trial date. CCP §2024.030.

### DEADLINE TO SERVE MOTION

You must serve the motion at least **16 court days** before the hearing date, if personally served. CCP §1005(b).

### NOTE

Add the applicable extension of time according to method of serving notice of motion. CCP §1005(b).

***Further Research:*** See Handling Expert Witnesses.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 57. SERVE NOTICE OF TRIAL DATE

STEP 57. SERVE NOTICE OF TRIAL DATE

---

WHEN TO SERVE NOTICE

Court to Serve Notice

Not less than **20 days** prior to the date set for trial, the clerk shall serve notice on all parties. CCP §594(b).

Party to Serve Notice

If clerk has *not* given notice, give notice not less than (CCP §§594(b), 1013):

- a. **15 days** before date set for trial, if you personally serve;
- b. **20 days** before trial, if you mail to an address in California;
- c. **25 days** before trial, if you mail to an address outside California but in the United States;
- d. **35 days** before trial, if you mail to an address outside the United States.

NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

NOTE

Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

WHEN TO SERVE IN UNLAWFUL DETAINER ACTION

Serve **10 days** before trial in an unlawful detainer action. CCP §594(b).

NOTE

CCP §1013 extension of time for mailing does *not* apply to unlawful detainer actions. CCP §594(b).

**Further Research:** See Civ Proc During Trial, chap 4.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/40 to 20 Days Before Trial/STEP 58. SERVE NOTICE ON PARTIES TO ATTEND TRIAL

STEP 58. SERVE NOTICE ON PARTIES TO ATTEND TRIAL

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#### PREPARE PROPER NOTICE

Use notice to require personal attendance of (CCP §1987(b)-(c)):

- a. Party; and/or
- b. Officer, director, or managing agent of party.

**Form:** See Civ Proc During Trial §4.69.

#### DEADLINE TO SERVE NOTICE FOR ATTENDANCE ONLY

Serve notice for attendance only:

If Personally Served

If personally served, at least **10 days** before trial; or

If Served by Mail

If served by mail at least (CCP §§1987(b), 1013):

- a. **15 days** before trial, if mailed to an address within California;
- b. **20 days** before trial, if mailed to an address outside California but within the United States;
- c. **30 days** before trial, if mailed to an address outside the United States.

#### NOTE

These extensions apply in the absence of a specific exception by statute or rule of court. CCP §1013(a).

If Service by Facsimile, Express Mail, or Other Overnight Delivery

Calculate time as if personally served, but **add 2 court days** for service by facsimile, express mail, or other method of overnight delivery.

#### NOTE

To serve notice for both attendance and documents, see the earlier deadline in step 45, above. Service by facsimile is allowed only if the parties agree in writing to that method of service. CCP §1013(c), (e).

**Further Research:** See Civ Proc During Trial, chap 4.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/20 Days Before Trial/STEP 59. COMPLETE EXPERT DEPOSITIONS

20 Days Before Trial

STEP 59. COMPLETE EXPERT DEPOSITIONS

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DEADLINE

**15 days** before the initial trial date, you must have completed all expert depositions. CCP §2024.030.

NOTE

A deposition is considered complete on the day the deposition begins. CCP §2024.010.

*Further Research:* See Handling Expert Witnesses.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/20 Days Before Trial/STEP 60. ATTEND HEARING ON DISCOVERY MOTIONS

STEP 60. ATTEND HEARING ON DISCOVERY MOTIONS

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DEADLINE

Hearing must take place:

Generally

On or before the **15th day** before the initial trial date (CCP §2024.020(a)); or

Experts

On or before the **10th day** before the initial trial date. CCP §2024.030.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/20 Days Before Trial/STEP 61. REVIEW JUDGES FOR CCP §§170.3 AND 170.6 CHALLENGES

STEP 61. REVIEW JUDGES FOR CCP §§170.3 AND 170.6 CHALLENGES

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WHEN APPROPRIATE

a. For a CCP §170.3 challenge, determine whether the judge, court commissioner, or referee who is assigned to try the case should be disqualified on any of the grounds listed in CCP §170.1. These include (but are not limited to):

- (1) Personal knowledge of disputed evidentiary facts (CCP §170.1(a)(1));
- (2) Having previously represented one of the parties (CCP §170.1(a)(2));
- (3) Having a financial interest in the outcome (CCP §170.1(a)(3));
- (4) Being related to a party or one of the attorneys (CCP §170.1(a)(4), (5); and
- (5) Being unable, due to a physical impairment, to properly perceive the evidence or conduct the hearing (CCP §170.1(a)(8)).

b. For a CCP §170.6 challenge, determine whether the judge, court commissioner, or referee of the court who is assigned to try the case should be disqualified because of prejudice against (CCP §170.6(a)(1)):

- (1) Any party or attorney; or
- (2) The interest of any party or attorney.

REVIEW INFORMATION ON JUDGE

Review information on the trial judge by:

- a. Talking to other attorneys who have appeared before the judge; and
- b. Researching judge's background, *e.g.*, Arnold, California Courts & Judges (7th ed 1995).

CCP §170.3 Requirements

a. If the judge does not voluntarily recuse himself or herself, move to disqualify "at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification. CCP §170.3(c)(1).

b. To initiate motion (CCP §170.3(c)(1)):

- (1) File with the clerk a written verified statement describing facts justifying disqualification;
- (2) Serve copies on each party; and
- (3) Personally serve the judge or his or her clerk.

c. The judge may then:

- (1) Withdraw from the case (without conceding that there are grounds for disqualification) and request any other judge agreed to by the parties to assume responsibility for the case (CCP §170.3(c)(2)); or
- (2) Within 10 days after filing or service (whichever is later) file a (CCP §170.3(c)(3)):
  - (a) Consent to the disqualification;
  - (b) Submit a verified response to the motion to the clerk for transmittal to the parties; or
  - (c) Do neither, which will be deemed a consent to the disqualification.

d. If the judge subject to the motion does not consent to disqualification, another judge agreed to by the parties or, absent agreement, selected by the Judicial Council, must rule on the motion.

#### CCP §170.6 Requirements

Make oral or written motion (CCP §170.6(a)(2)):

- a. If assigned by a master calendar system, no later than the time your case is first assigned for trial;
- b. If directed to a hearing (other than trial, *e.g.*, a motion, order to show cause), no later than the commencement of the hearing;
- c. When the trial judge (other than a judge assigned to the case for all purposes) is known at least 10 days before trial date, at least **5 days** before trial;
- d. When your case is assigned to one judge for all purposes, within **10 days** after clerk gives notice of the assignment, or if your client has not yet appeared in the case, within **10 days** after the appearance; or
- e. When trial court's decision is reversed on appeal, and the same trial judge is assigned to conduct a new trial on the matter, within **60 days** after clerk gives notice of assignment.

If Direct or Master Calendar Court

Under Govt C §68616(i):

- a. In direct calendar courts, challenges under CCP §170.6 must be exercised within 15 days after party's *first* appearance; and
- b. In master calendar courts, timing is governed solely by CCP §170.6. See below.

NOTE

"New trial" for purposes of peremptory challenge (CCP §170.6) on remand requires reexamination of factual or legal issues litigated in the prior proceeding. *Paterno v Superior Court* (2004) 123 CA4th 548, 20 CR3d 282 (remand for determination of damages only was not a new trial and peremptory challenge was properly dismissed).

**Sample Form:** See CCP §170.6(a)(5).

**Further Research:** See Civ Proc During Trial, chap 6.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/20 Days Before Trial/STEP 62. MAKE CCP §998 OFFER TO COMPROMISE

STEP 62. MAKE CCP §998 OFFER TO COMPROMISE

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DEADLINE TO MAKE CCP §998 OFFER

Serve CCP §998 offer no later than **10 days** before beginning of trial or arbitration. CCP §998(b).

DEADLINE TO ACCEPT

Offer is deemed withdrawn if not accepted prior to trial or arbitration or within **30 days** after it is made, whichever occurs first. CCP §998(b)(2).

NOTE

CCP §998 offer that is revoked by the offeror before expiration of the statutory time period is a nullity for purposes of cost-shifting. Marcey v Romero (2007) 148 CA4th 1211, 56 CR3d 402.

*Further Research:* See step 24, above.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX A Trial Preparation Checklist

APPENDIX A  
Trial Preparation Checklist\*

Case Name \_\_\_\_\_ File No. \_\_\_\_\_

TRIAL DATE \_\_\_\_\_ SETTLEMENT CONFERENCE DATE \_\_\_\_\_

(TD = trial date)

ACTION	DATE DUE	DATE DONE
<b>After Notice of Mandatory Settlement Conference</b>		
Advise client of trial date and settlement conference date	_____	_____
Advise carrier of trial date and settlement conference date	_____	_____
Advise witnesses of trial date and determine advisability of subpoenaing witnesses	_____	_____
Review file to evaluate for settlement	_____	_____
Review file for consideration of summary judgment/summary adjudication issues	_____	_____
Review file for possible judicial arbitration, mediation, or other alternative dispute resolution process	_____	_____
Determine whether additional consultants or experts may be needed	_____	_____
<b>When Preparing for Trial</b>		
Organize the case files, set up trial system	_____	_____
Research legal issues	_____	_____
Review, organize evidence:	_____	_____
Decide which witnesses to call	_____	_____
Organize your documentary evidence	_____	_____
Determine whether judicial notice would be useful for introducing any noncontroversial facts into evidence	_____	_____
Amend pleadings ( <u>Cal Rules of Ct 3.1300(a), 3.1324</u> )	21-day notice plus time for service by mail	_____
<b>120 to 160 Days Before Trial</b>		
File motion for summary judgment/summary adjudication ( <u>CCP §437c(a), (e)</u> )	TD minus 30 for last day of hearing, plus 75-day notice and additional days if served by mail	_____
Demand disclosure of expert witness information ( <u>CCP §§2034.220, 2016.060</u> )	TD minus 70, or 10 days after TD is set	_____
Demand and schedule IME ( <u>CCP §§2032.010-2032.320</u> )	TD minus 120 if by court order; TD minus 60, plus time for motion to compel if pursuant to demand	_____
Notice depositions with records ( <u>CCP §§1013, 2025.220, 2025.240.</u> )	TD minus 55 if served by mail	_____

Notice depositions of parties by mail ( <u>CCP §§1013, 2025.210-2025.280</u> )	TD minus 45	_____	_____
Notice depositions of nonparties by personal service ( <u>CCP §§2024.020(a), 2025.210-2025.280.</u> )	TD minus 50 plus time for motion to compel) (plus time for requesting business records/ consumer records, if needed	_____	_____
Personally serve interrogatories ( <u>CCP §2030.080</u> )	TD minus 60 plus time for motion to compel	_____	_____
Personally send demand for inspection ( <u>CCP §§2031.030(c), 2031.040, 2031.050</u> )	TD minus 60 plus time for motion to compel	_____	_____
Request supplemental interrogatory responses ( <u>CCP §2030.070</u> )	TD minus 60	_____	_____
<b>60 to 40 Days Before Trial</b>			
Demand bill of particulars		_____	_____
Exchange expert witness information ( <u>CCP §2034.230</u> )	TD minus 50 or demand minus 20	_____	_____
Supplement your own discovery responses		_____	_____
File motion to sever or bifurcate for trial ( <u>CCP §§598, 1005</u> )	TD minus 46, TD minus 51 if by mail	_____	_____
Notice expert witness depositions ( <u>CCP §§2034.220, 2016.060, 2024.030</u> )	TD minus 30 if by mail	_____	_____
Move to compel discovery ( <u>CCP §2024.020(a)</u> )	TD minus 41 if by mail	_____	_____
<b>40 to 20 Days Before Trial to Time of Trial</b>			
Make sure discovery is complete or obtain extension ( <u>CCP §§2024.020(a), 2024.040(b)</u> )	TD minus 30	_____	_____
Supplement expert disclosure ( <u>CCP §2034.280</u> )	TD minus 30, or exchange date plus 20	_____	_____
Move to compel discovery ( <u>CCP §2024.020(a)</u> )	TD minus 36 if personally served	_____	_____
Prepare for mandatory settlement conference		_____	_____
Prepare trial brief		_____	_____
Prepare motions in limine		_____	_____
Meet with witnesses and prepare for witness testimony		_____	_____
Prepare jury instructions		_____	_____
Prepare questions for jury voir dire		_____	_____
Prepare opening statement		_____	_____
Prepare closing argument		_____	_____
Deposit jury fees ( <u>CCP §631</u> )	TD minus 25	_____	_____
Serve notice by mail on parties to attend trial with documents ( <u>CCP §§1013, 1987(b)-(c)</u> )	TD minus 25 by mail	_____	_____
Serve subpoena on witnesses for trial with	TD minus 25 if by mail	_____	_____

consumer records (CCP §1985.3)

Move to compel discovery re expert witnesses (CCP §2024.030) TD minus 30 if by mail \_\_\_\_\_

Serve notice of trial date (CCP §594) TD minus 20 if by mail \_\_\_\_\_

Serve notice on parties to attend trial (CCP §1987) TD minus 15 if by mail \_\_\_\_\_

**20 Days Before Trial to Time of Trial**

Complete expert depositions (CCP §2024.030) TD minus 15 \_\_\_\_\_

Attend hearings on motion to compel discovery (CCP §2024.020(a)) TD minus 15 \_\_\_\_\_

Make CCP §998 offer (CCP §998(b)) TD minus 10 \_\_\_\_\_

Review judges for CCP §§170, 170.6 challenges TD minus 5 \_\_\_\_\_

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This checklist was taken from material provided by Gail F. Flatt of O'Brien, Watters & Davis, Santa Rosa.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX B Arbitration Preparation Checklist

APPENDIX B  
Arbitration Preparation Checklist\*

Case Name \_\_\_\_\_ File No. \_\_\_\_\_

ARBITRATION DATE \_\_\_\_\_

(AD = arbitration date)

Immediately after you receive notice that your case has been selected for the court's Mandatory Arbitration Program:

1. Serve Interrogatories; and
2. Serve Demand for Inspection of Documents

*Note:* It is important to serve discovery requests as soon as possible after learning when the arbitration will take place to ensure that you have enough time to compel discovery, if necessary.

ACTION		DATE DUE	DATE DONE
Advise client, carrier, and witnesses of arbitration date	(immediately after receiving notice of AD	_____	_____
Serve subpoena duces tecum (SDT) to receive in time for notice of intent to introduce	AD minus 55	_____	_____
Mail Notice of Deposition with documents ( <u>CCP §§2025.210-2025.280; Cal Rules of Ct 3.822</u> )	AD minus 40	_____	_____
Mail Notice of Deposition ( <u>CCP §§2025.210-2025.280</u> )	AD minus 30	_____	_____
Mail notice to parties to attend and bring documents ( <u>CCP §1987</u> )	AD minus 25	_____	_____
Mail, <i>e.g.</i> , reports, medical records ( <u>Cal Rules of Ct 3.823(b)(1)-(2)</u> )	AD minus 25	_____	_____
Mail notice of intent to introduce deposition into evidence at arbitration ( <u>Cal Rules of Ct 3.823(b)(3)</u> )	AD minus 25	_____	_____
Serve SDT for personal records and comply with consumer notice ( <u>CCP §1985.3</u> )	AD minus 25	_____	_____
Hand serve notice of intent to introduce deposition ( <u>Cal Rules of Ct 3.823(b)</u> )	AD minus 20	_____	_____
Mail demand for appearance by party ( <u>CCP §1987(b)</u> )	AD minus 15	_____	_____
Serve SDT for business records	AD minus 15	_____	_____
Serve demand that witness be produced in person (in opposition to a written statement propounded by opposing party ( <u>Cal Rules of Ct 3.823(b)(2)</u> )	AD minus 10	_____	_____

\_\_\_\_\_

This checklist was taken from material provided by Gail F. Flatt of O'Brien, Watters & Davis, Santa Rosa.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX C Sample Trial Preparation Systems

APPENDIX C

Sample Trial Preparation Systems

The following are sample trial preparation systems. Not all attorneys prefer one system, nor is one system suited to all cases. You may adapt elements from the examples below in developing your own system, depending on the particular case and your own preferences.

SAMPLE SYSTEM #1: Commonly used when preparing for trial

TRIAL BINDER

With dividers and tabs to include:

- a. Things to do/thoughts;
- b. Pleadings/discovery;
- c. Chronology;
- d. Issues/evidence checklist (see steps 27 and 28);
- e. Exhibit list/log;
- f. List of *all* expected witnesses in order to help you:
  - (1) Decide the order of witnesses you call; and
  - (2) Verify that witnesses will attend trial by proper notice, subpoena, or agreement;
- g. Voir dire;
- h. Opening statement;
- I. Closing argument;
- j. Jury instructions;
- k. Research;
- l. Miscellaneous.

WITNESS BINDER/FOLDER

Include for *each* expected witness:

- a. Witness's personal data sheet, including:
  - (1) Home address;
  - (2) Work address;
  - (3) Home telephone number; and
  - (4) Work telephone number;
- b. Copy of deposition transcript and summary;
- c. Copy of witness's prior statements;
- d. Copy of trial exhibits about which witness may testify;
- e. Outline of direct examination;

- f. Copy of notice to attend trial or return on subpoena.

## EXHIBIT BOX

Centralized location for documents and other exhibits you expect to use at trial should include:

- a. Original exhibits (premarked where necessary);
- b. Evidence memos, other research briefs, or materials on admissibility;
- c. Sufficient copies of exhibits for you, court, and all other counsel.

*Note:* If planning to read multiple interrogatories or requests for admission, determine how to present them under local rule or practice.

## EXHIBIT LIST

List *all* exhibits expected to be used at trial (see [step 31](#)), and include:

- a. Place to indicate whether the document has been admitted into evidence or rejected;
- b. Identification and cross-reference to how you will lay a foundation for introduction of the document;
- c. Location of each exhibit.

SAMPLE SYSTEM #2: Begins with setting up files as soon as you accept case

(For more detailed discussion, see [Civ Proc During Trial, chap 3.](#))

## SET UP FILES

Use a method of setting up and organizing your files from the outset to meet your trial objectives, *e.g.*, by establishing as many files as you need for:

- a. Correspondence;
- b. Pleadings;
- c. Motions and demurrers;
- d. Discovery documents, including a chronological index sheet;
- e. Witness materials, *e.g.*:
  - (1) Statements and declarations;
  - (2) Deposition transcripts and summaries;
- f. Documents, including:
  - (1) An index of document files (note the source of all documents so that you can quickly refer to this information if you need it to lay a foundation to introduce a document);
  - (2) Summaries of any voluminous documents;
- g. Your attorney notes;
- h. Legal research.

## CONSIDER PHYSICAL EVIDENCE

Assess the kinds of demonstrative and physical evidence you will want to introduce at trial.

## REVIEW YOUR CASE FILE

Review file periodically before trial for sources of potential evidence, in light of elements of the case that you need to prove or disprove.

#### Outline Your Case:

a. Prepare an issue outline covering:

- (1) Every element of cause of action or defense you must establish to prevail;
- (2) All facts necessary to prove each element of your claim or defense;
- (3) All evidence you need to offer to prove the facts.

b. Organize the outline by categories that allow you to quickly identify evidence that you will need to introduce at trial to prove or disprove an issue, *e.g.*, by:

- (1) Issues and subissues;
- (2) Documentary or demonstrative evidence;
- (3) Percipient, expert, or foundational witnesses;
- (4) Applicable law.

c. Under the relevant category, list:

- (1) Specific issue and evidentiary or legal subissues supporting it;
- (2) Items of proof for each issue or subissue, *e.g.*:
  - (a) Names of witnesses;
  - (b) Documents;
  - (c) Demonstrative evidence;
- (3) Case or statute applying to each issue.

#### Outline Opposing Side's Case:

Use outline you developed to prove your case and fill in with elements, facts, and evidence that the other side will use to try to prevail.

#### Outline Your Rebuttal:

Use outline of opposing side's case and note any additional evidence that you may need to present to rebut each point.

#### REVIEW YOUR EVIDENCE

Use the outline of your case (see above) and sort through all available evidence to identify whether you need any additional evidence.

#### ORGANIZE EVIDENCE

Organize evidence in the order in which you intend to present it.



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE

1. I served this Deposition Subpoena for Personal Appearance by personally delivering a copy to the person served as follows:

- a. Person served (name):
- b. Address where served:
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees and mileage both ways (check one):
  - (1)  were paid. Amount: ..... \$ \_\_\_\_\_
  - (2)  were not paid.
  - (3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (specify): ..... \$ \_\_\_\_\_
- f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (date):

- 3. Person serving:
  - a.  Not a registered California process server
  - b.  California sheriff or marshal
  - c.  Registered California process server
  - d.  Employee or independent contractor of a registered California process server
  - e.  Exempt from registration under Business and Professions Code section 22350(b)
  - f.  Registered professional photocopier
  - g.  Exempt from registration under Business and Professions Code section 22451
  - h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only) I certify that the foregoing is true and correct.

Date:

Date:

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(SIGNATURE)

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX E Deposition Subpoena for Personal Appearance and Production of Documents and Things (Judicial Council Form 982(a)(15.4))

APPENDIX E

Deposition Subpoena for Personal Appearance and Production of Documents and Things  
(Judicial Council Form 982(a)(15.4))



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> ): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS</b>	CASE NUMBER: _____

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (*name, address, and telephone number of deponent, if known*):

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following date, time, and place:

Date:	Time:	Address:
-------	-------	----------

- a.  As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 4. (Code Civ. Proc., § 2025.230.)
  - b.  You are ordered to produce the documents and things described in item 3.
  - c.  This deposition will be recorded stenographically  through the instant visual display of testimony and by  audiotape  videotape.
  - d.  This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025.620(d).
2. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena. The procedure authorized by Evidence Code sections 1560(b), 1561, and 1562 will not be deemed sufficient compliance with this subpoena.
3. The documents and things to be produced and any testing or sampling being sought are described as follows:

Continued on Attachment 3.

4. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are described as follows:

Continued on Attachment 4.

5. **IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.**
6. *At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition; later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition. Unless the court orders or you agree otherwise, if you are being deposed as an individual, the deposition must take place within 75 miles of your residence or within 150 miles of your residence if the deposition will be taken within the county of the court where the action is pending. The location of the deposition for all deponents is governed by Code of Civil Procedure section 2025.250.*

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF \$500 AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued:

\_\_\_\_\_ (SIGNATURE OF PERSON ISSUING SUBPOENA)



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS**

1. I served this *Deposition Subpoena for Personal Appearance and Production of Documents and Things* by personally delivering a copy to the person served as follows:
  - a. Person served (*name*):
  - b. Address where served:
  - c. Date of delivery:
  - d. Time of delivery:
  - e. Witness fees and mileage both ways (*check one*):
    - (1)  were paid. Amount . . . . . \$ \_\_\_\_\_
    - (2)  were not paid.
    - (3)  were tendered to the witness's public entity employer as required by Government Code section 68097.2. The amount tendered was (*specify*): . . . . . \$ \_\_\_\_\_
  - f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:
  - a.  Not a registered California process server
  - b.  California sheriff or marshal
  - c.  Registered California process server
  - d.  Employee or independent contractor of a registered California process server
  - e.  Exempt from registration under Business and Professions Code section 22350(b)
  - f.  Registered professional photocopier
  - g.  Exempt from registration under Business and Professions Code section 22451
  - h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date: \_\_\_\_\_  
▶ \_\_\_\_\_  
(SIGNATURE)

Date: \_\_\_\_\_  
▶ \_\_\_\_\_  
(SIGNATURE)

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX F Deposition Subpoena for Production of Business Records (Judicial Council Form 982(a)(15.2))

APPENDIX F  
Deposition Subpoena for Production of Business Records  
(Judicial Council Form 982(a)(15.2))





PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**PROOF OF SERVICE OF DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS**

1. I served this *Deposition Subpoena for Production of Business Records* by personally delivering a copy to the person served as follows:

a. Person served (*name*):

b. Address where served:

c. Date of delivery:

d. Time of delivery:

e. (1)  Witness fees were paid.  
Amount: ..... \$ \_\_\_\_\_

(2)  Copying fees were paid.  
Amount: ..... \$ \_\_\_\_\_

f. Fee for service: ..... \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional copier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

(For California sheriff or marshal use only)  
I certify that the foregoing is true and correct.

Date:

Date:

▶ \_\_\_\_\_  
(SIGNATURE)

▶ \_\_\_\_\_  
(SIGNATURE)

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX G Notice to Consumer or Employee and Objection (Judicial Council Form 982(a)(15.5))

APPENDIX G  
Notice to Consumer or Employee and Objection  
(Judicial Council Form 982(a)(15.5))



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
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/ PETITIONER: DEFENDANT/ RESPONDENT:	CASE NUMBER:
<b>NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION</b> (Code Civ. Proc., §§ 1985.3, 1985.6)	

**NOTICE TO CONSUMER OR EMPLOYEE**

**TO (name):**

1. PLEASE TAKE NOTICE THAT **REQUESTING PARTY (name)**:  
 SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on *(specify date)*:  
 The records are described in the subpoena directed to **witness (specify name and address of person or entity from whom records are sought)**:  
 A copy of the subpoena is attached.
2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED IN ITEM a. OR b. BELOW:
  - a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the **witness** and the **deposition officer** named in the subpoena at least five days before the date set for production of the records.
  - b. If you are not a party to this action, you must serve on the **requesting party** and on the **witness**, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should **not** be filed with the court. **WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.**
3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE OF  REQUESTING PARTY  ATTORNEY)

**OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS**

1.  I object to the production of all of my records specified in the subpoena.
2.  I object only to the production of the following specified records:
  
3. The specific grounds for my objection are as follows:

Date:

\_\_\_\_\_ \_\_\_\_\_  
 (TYPE OR PRINT NAME) (SIGNATURE)

(Proof of service on reverse)



PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER:
--	--------------

**PROOF OF SERVICE OF NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

Personal Service     Mail

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
  2. I served a copy of the *Notice to Consumer or Employee and Objection* as follows (check either a or b):
    - a.  **Personal service.** I personally delivered the *Notice to Consumer or Employee and Objection* as follows:
 

(1) Name of person served:	(3) Date served:
(2) Address where served:	(4) Time served:
    - b.  **Mail.** I deposited the *Notice to Consumer or Employee and Objection* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(1) Name of person served:	(3) Date of mailing:
(2) Address:	(4) Place of mailing (city and state):
  - (5) I am a resident of or employed in the county where the *Notice to Consumer or Employee and Objection* was mailed.
  - c. My residence or business address is (specify):
  - d. My phone number is (specify):
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date:

	▶	
<small>(TYPE OR PRINT NAME OF PERSON WHO SERVED)</small>		<small>(SIGNATURE OF PERSON WHO SERVED)</small>

**PROOF OF SERVICE OF OBJECTION TO PRODUCTION OF RECORDS**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

Personal Service     Mail

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
  2. I served a copy of the *Objection to Production of Records* as follows (complete either a or b):
    - a. ON THE REQUESTING PARTY
      - (1)  **Personal service.** I personally delivered the *Objection to Production of Records* as follows:
 

(i) Name of person served:	(iii) Date served:
(ii) Address where served:	(iv) Time served:
      - (2)  **Mail.** I deposited the *Objection to Production of Records* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(i) Name of person served:	(iii) Date of mailing:
(ii) Address:	(iv) Place of mailing (city and state):
    - (v) I am a resident of or employed in the county where the *Objection to Production of Records* was mailed.
  - b. ON THE WITNESS
    - (1)  **Personal service.** I personally delivered the *Objection to Production of Records* as follows:
 

(i) Name of person served:	(iii) Date served:
(ii) Address where served:	(iv) Time served:
    - (2)  **Mail.** I deposited the *Objection to Production of Records* in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
 

(i) Name of person served:	(iii) Date of mailing:
(ii) Address:	(iv) Place of mailing (city and state):
    - (v) I am a resident of or employed in the county where the *Objection to Production of Records* was mailed.
3. My residence or business address is (specify):
4. My phone number is (specify):
- I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date:

	▶	
<small>(TYPE OR PRINT NAME OF PERSON WHO SERVED)</small>		<small>(SIGNATURE OF PERSON WHO SERVED)</small>

APPENDIX H  
Case Management Statement (Judicial Council Form CM-110))



CM-110

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: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
<b>CASE MANAGEMENT STATEMENT</b> ( <i>Check one</i> ): <input type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	CASE NUMBER: _____
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: _____ Time: _____ Dept.: _____ Div.: _____ Room: _____ Address of court ( <i>if different from the address above</i> ): _____ <input type="checkbox"/> Notice of Intent to Appear by Telephone, by ( <i>name</i> ): _____	

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** (*answer one*):
  - a.  This statement is submitted by party (*name*):
  - b.  This statement is submitted **jointly** by parties (*names*):
  
2. **Complaint and cross-complaint** (*to be answered by plaintiffs and cross-complainants only*)
  - a. The complaint was filed on (*date*):
  - b.  The cross-complaint, if any, was filed on (*date*):
  
3. **Service** (*to be answered by plaintiffs and cross-complainants only*)
  - a.  All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (*specify names and explain why not*):
    - (2)  have been served but have not appeared and have not been dismissed (*specify names*):
    - (3)  have had a default entered against them (*specify names*):
  - c.  The following additional parties may be added (*specify names, nature of involvement in case, and the date by which they may be served*):
  
4. **Description of case**
  - a. Type of case in  complaint     cross-complaint    (*Describe, including causes of action*):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

*(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request  a jury trial  a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a.  The trial has been set for *(date)*:  
 b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a.  days *(specify number)*:  
 b.  hours (short causes) *(specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:

- a. Attorney:
  - b. Firm:
  - c. Address:
  - d. Telephone number:
  - e. Fax number:
  - f. E-mail address:
  - g. Party represented:
- Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

- a. Counsel  has  has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b.  All parties have agreed to a form of ADR. ADR will be completed by *(date)*:
- c.  The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

10. d. The party or parties are willing to participate in (check all that apply):

- (1)  Mediation  
(2)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
(3)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
(4)  Binding judicial arbitration  
(5)  Binding private arbitration  
(6)  Neutral case evaluation  
(7)  Other (specify):

- e.  This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
f.  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
g.  This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. **Settlement conference**

- The party or parties are willing to participate in an early settlement conference (specify when):

12. **Insurance**

- a.  Insurance carrier, if any, for party filing this statement (name):  
b. Reservation of rights:  Yes  No  
c.  Coverage issues will significantly affect resolution of this case (explain):

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- Bankruptcy  Other (specify):

Status:

14. **Related cases, consolidation, and coordination**

- a.  There are companion, underlying, or related cases.  
(1) Name of case:  
(2) Name of court:  
(3) Case number:  
(4) Status:  
 Additional cases are described in Attachment 14a.  
b.  A motion to  consolidate  coordinate will be filed by (name party):

15. **Bifurcation**

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. **Other motions**

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**17. Discovery**

- a.  The party or parties have completed all discovery.
- b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
--------------	--------------------	-------------

- c.  The following discovery issues are anticipated (*specify*):

**18. Economic litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**19. Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

**20. Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):

- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Total number of pages attached (*if any*): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PARTY OR ATTORNEY)
(TYPE OR PRINT NAME)	▶	(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached.

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX I Civil Subpoena for Personal Appearance at Trial or Hearing (Judicial Council Form 982(a)(15))

APPENDIX I

Civil Subpoena for Personal Appearance at Trial or Hearing  
(Judicial Council Form 982(a)(15))



ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR ( <i>Name</i> ): _____	FOR COURT USE ONLY
NAME OF COURT: STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
<b>CIVIL SUBPOENA</b> For Personal Appearance at Trial or Hearing	CASE NUMBER: _____

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO** (*name, address, and telephone number of witness, if known*):

1. **YOU ARE ORDERED TO APPEAR AS A WITNESS** in this action at the date, time, and place shown in the box below **UNLESS** you make an agreement with the person named in item 2:

a. Date: _____ Time: _____ <input type="checkbox"/> Dept.: _____ <input type="checkbox"/> Div.: _____ <input type="checkbox"/> Room: _____ b. Address: _____
---

2. **IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:**

a. Name of subpoenaing party or attorney: \_\_\_\_\_ b. Telephone number: \_\_\_\_\_

3. **Witness Fees:** You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them at the time of service. You may request them before your scheduled appearance from the person named in item 2.

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.**

Date issued: \_\_\_\_\_

..... (TYPE OR PRINT NAME) ▶ \_\_\_\_\_ (SIGNATURE OF PERSON ISSUING SUBPOENA)  
 \_\_\_\_\_ (TITLE)

**Requests for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code, § 54.8.)



(Proof of service on reverse)



PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**PROOF OF SERVICE OF CIVIL SUBPOENA  
FOR PERSONAL APPEARANCE AT TRIAL OR HEARING**

1. I served this *Civil Subpoena for Personal Appearance at Trial or Hearing* by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:
- c. Date of delivery:
- d. Time of delivery:
- e. Witness fees (*check one*):
  - (1)  were offered or demanded and paid. Amount: . . . . . \$ \_\_\_\_\_
  - (2)  were not demanded or paid.
- f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

**(For California sheriff or marshal use only)**  
I certify that the foregoing is true and correct.

Date:

Date:

▶ \_\_\_\_\_  
(SIGNATURE)

▶ \_\_\_\_\_  
(SIGNATURE)

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX J Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing (Judicial Council Form 982(a)(15.1))

APPENDIX J

Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing (Judicial Council Form 982(a)(15.1))





PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

The production of the documents or the other things sought by the subpoena on page one is supported by (*check one*):

the attached affidavit or declaration  the following declaration:

**DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING**  
(Code Civ. Proc., §§ 1985, 1987.5)

1. I, the undersigned, declare I am the  plaintiff  defendant  petitioner  respondent  
 attorney for (*specify*):  other (*specify*):  
in the above-entitled action.

2. The witness has possession or control of the following documents or other things and shall produce them at the time and place specified in the *Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing* on page one of this form (*specify the exact documents or other things to be produced*):

Continued on Attachment 2.

3. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons:

Continued on Attachment 3.

4. These documents or other things described in paragraph 2 are material to the issues involved in this case for the following reasons:

Continued on Attachment 4.

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

Date:

..... (TYPE OR PRINT NAME)  (SIGNATURE OF  SUBPOENAING PARTY  ATTORNEY FOR SUBPOENAING PARTY)

**Request for Accommodations**

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms) for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civil Code, § 54.8.)



(Proof of service on page 3)

PLAINTIFF/PETITIONER:	CASE NUMBER:
DEFENDANT/RESPONDENT:	

**PROOF OF SERVICE OF CIVIL SUBPOENA (DUCES TECUM)  
FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS  
AND THINGS AT TRIAL OR HEARING AND DECLARATION**

1. I served this *Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration* by personally delivering a copy to the person served as follows:

- a. Person served (*name*):
- b. Address where served:
  
- c. Date of delivery:
- d. Time of delivery:
  
- e. Witness fees (*check one*):
  - (1)  were offered or demanded and paid. Amount: . . . . . \$ \_\_\_\_\_
  - (2)  were not demanded or paid.
  
- f. Fee for service: . . . . . \$ \_\_\_\_\_

2. I received this subpoena for service on (*date*):

3. Person serving:

- a.  Not a registered California process server.
- b.  California sheriff or marshal.
- c.  Registered California process server.
- d.  Employee or independent contractor of a registered California process server.
- e.  Exempt from registration under Business and Professions Code section 22350(b).
- f.  Registered professional photocopier.
- g.  Exempt from registration under Business and Professions Code section 22451.
- h. Name, address, telephone number, and, if applicable, county of registration and number:

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

**(For California sheriff or marshal use only)**  
I certify that the foregoing is true and correct.

Date:

Date:

▶ \_\_\_\_\_  
(SIGNATURE)

▶ \_\_\_\_\_  
(SIGNATURE)

**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX K Sample Information Letter for Friendly Witnesses

APPENDIX K

Sample Information Letter for Friendly Witnesses

*This letter is a sample designed to include information with a subpoena served on a prospective friendly witness.*

YELLOW & PURPLE

Attorneys at Law  
1111 Main Street  
Anytown, California 90000  
(100) 888-1000

We have issued a subpoena for you to testify at the trial of XYZ v ABC Manufacturing. You should understand the reasons that issuing a subpoena benefits you:

- (a) The subpoena entitles you to collect the modest witness fees set by law (Govt C §68093), *i.e.*, \$35/day and \$.20/mile.
- (b) You can use the subpoena to justify your absence from your job on the day of testimony.
- (c) If you are ill, or unable to appear because of an emergency, the court may continue the trial to allow you to appear, but only if we have subpoenaed you.

The following paragraphs will provide you with important information about the case of XYZ v ABC Manufacturing Co.

Case Background

XYZ and Smith Jones have claimed that ABC and Jack Smith have infringed its trademark by sending out boxes carrying the words "genuine Smith parts," stamped with the same colors that Smith Jones had been using to ship its car replacement parts.

Jack Smith and ABC have counterclaimed. ABC, in early March 2006, obtained a promise from Smith Jones that it would not sue for trademark infringement if ABC used up all of the boxes it had carrying the words "Smith parts" or "genuine Smith parts." In making the promise, ABC did not admit that it was infringing on any trademark. ABC's argument is that virtually everybody purchasing car replacement parts knows exactly who Smith Jones is, and therefore the use of "Smith parts" does not confuse the customer, which is the test in trademark infringement cases.

Court Procedures

Court trials proceed by formal rules. We are unable simply to agree to facts that are obvious. We are obligated to produce the records in court so that the jury can view them as evidence. Similarly, we must produce live witnesses to testify to each fact of our defense, and each fact of our counterclaim.

We recognize that this is often inconvenient for witnesses. We will do our best to make it as easy as possible for you. Please read the following paragraphs for more detailed information:

- (1) XYZ's case against ABC is now set to begin on July 15, 2008, at 10:00 a.m. It will be held in the courtroom of the Honorable John Doe, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California. Because XYZ is the plaintiff in the case, witnesses for them will appear first. Civil trials are often delayed in starting, sometimes days, sometimes months. We will keep you advised.
- (2) Do not appear in court on July 15, 2008, unless advised to do so. Please be near a telephone, on telephone standby, and we will advise you, as accurately as possible, about when we need your presence. We intend to make this process as easy as possible for you, with minimum disruption to your personal or professional life.
- (3) Ed Blue, my secretary, or Rita White, a private investigator working on this case for me, will advise you about when you should expect to appear in court. If the situation changes (as it often does, because a trial does not go according to script), they will keep you advised. You should inform them of any scheduling problems you have, in order that we might work around them. Ed can be reached at 888-1000, and Rita's number is 777-1000.
- (4) Either Herbert Black, another attorney for ABC, or I will try to review your testimony with you before trial, either by telephone or in person. The purpose of this review is to make you more comfortable at trial. All attorneys prepare their witnesses. If you are asked about this in court, you should not be embarrassed about admitting that you have spent time with us going over

your testimony.

(5) We cannot emphasize too strongly our wish that you tell the complete truth. If a representative of XYZ contacts you, you do not have to speak with them. If you want to do so, of course you may. We prefer to have a representative of our office present if they interview you. This guarantees that your statements will not be taken out of context and used against you at trial.

(6) The attorneys for XYZ may also subpoena you for trial. If so, you will have to make separate arrangements with them for your appearance. If you have to appear during XYZ's portion of the trial, we will try to ask all of our questions at that time, so that you do not have to come back during the defense part of the case.

Remember, the date on the subpoena is the date the trial begins. You are apt to appear later, and your appearance will be coordinated by our secretary or the investigator, named in paragraph 3, above.

Please call us if you have any questions or any additional information about this case.

James Red

YELLOW & PURPLE

Attorney for ABC Manufacturing Co. and Jack Smith  
(100) 666-3000 (home number, evenings & weekends)

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX L Advice to Friendly Witness Concerning Testimony at Trial

APPENDIX L

Advice to Friendly Witness Concerning Testimony at Trial\*

*You can review these admonitions orally with friendly witness, or provide a copy of them before the trial.*

GENERAL GUIDELINES

1. Tell the truth.
2. Don't be afraid of lawyers.
3. Relax; never lose your temper.
4. Speak slowly and clearly (most of us speak more rapidly than we realize).
5. Always be sure of the question. Neither anticipate the question, nor begin answering until the question is completed. If you are unsure of the question, ask for a repeat or rephrasing.
6. Under cross-examination, DON'T VOLUNTEER. If you can answer yes or no, do so and STOP.
7. Do not be afraid to admit that you don't know an answer, or do not remember a fact. Many witnesses are embarrassed to admit that they are human.
8. You need not be positive to give an answer. You may testify that you think something is probably true, or probably untrue. If you need to explain an answer, do so.
9. Do not memorize your testimony. Speak in your own words. Don't kid or joke, and always be courteous to the judge and other counsel.
10. Do not be reluctant to admit on the stand that you have reviewed your testimony with me. Every competent attorney goes over testimony with prospective witnesses.
11. Get a good night's rest, have a good meal before coming to court, and do not drink or take tranquilizers or medication unless required to by a doctor. Otherwise, your ability to communicate may be impaired.
12. Do not read, chew gum, sleep, or talk during court proceedings.
13. Do not wave or talk to the client or the attorney in the courtroom, hallways, or restrooms. You may appear partial to the client in the jurors' eyes, causing them to discredit your testimony. The same advice applies to the client: it is usually not a good idea to talk to a witness.
14. Do not discuss the case in the courtroom, hallways, or bathrooms, because jurors and others may overhear the discussion.
15. Do not say *anything at any time* to a juror in or out of the courtroom. Unauthorized communications with jurors, directly or indirectly, may give rise to a mistrial, a new trial, or reversal of a judgment. See, *e.g.*, *Walter v Ayvazian* (1933) 134 CA 360, 25 P2d 526. See also CCP §§611, 613.
16. When seated in court, do not react to favorable or unfavorable testimony. Grimaces and smirks may be noticed by the jury.
17. Do not pass notes to the attorney while in court.
18. If there is an objection to a question, wait for a ruling before you answer.
19. If you make a mistake, correct it, even if the questioner has moved on to another question.
20. If you are a witness, on completion of your testimony, leave the courtroom. Do not wait for or attempt to talk to the client or the attorney.

DIRECT EXAMINATION

Your testimony is very important. Your presentation of the facts, brought out through my questioning, will educate the jury about the circumstances surrounding the lawsuit.

You should "paint the picture" as clearly as possible, but do not exaggerate. The truth will best be served by a deliberate and succinct recitation of facts you know to be true. The most effective witness is sincere, direct, well-prepared, and not too emotional.

## CROSS-EXAMINATION

You will probably be cross-examined by opposing counsel. He or she will attempt to shake your belief in what you have said; always stating the truth defeats this tactic.

The cross-examination may stray from the search for the facts, and wander, in an attempt to show bias or favoritism towards the client. Such questions might include: "Have you prepared your testimony with anyone today?" Do not hesitate to answer yes. It is perfectly proper to prepare testimony with counsel before taking the stand.

Do not feel badgered by questions you feel are irrelevant. An opposing counsel may be searching for a way to discredit your direct testimony; answer each question concisely, politely, and honestly.

---

This material is based on instructions that originally appeared in *Preparing a Case for Trial: Last 100 Days* (Cal CEB Program Handbook Mar./Apr. 1990), developed by William A. Brockett.

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/APPENDIX M Sample Stipulation on Use of Documents at Trial

APPENDIX M  
Sample Stipulation on Use of Documents at Trial

*Consider what other stipulations (e.g., stipulation regarding undisputed facts) might expedite the trial.*

Reed M. Andweep, SBN 000000

GREEN & COE

1190 West Apple Street, Suite 100

Anytown, CA 90000

(100) 555-5555

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF MAIN

JOAN SMITH

Plaintiff,

vs.

JOHN JONES, et al.,

Defendants

)

)

)

)

)

)

)

No. \_\_\_\_\_

STIPULATION ON USE OF  
DOCUMENTS AT TRIAL

IT IS AGREED AND STIPULATED among the parties to this action, by and through their counsel, for purposes of trial of this case, that:

1. Copies of all documents produced during discovery may be used as admissible secondary evidence under Evidence Code §1521 if such copies are complete and legible.

a. "Documents produced during discovery" as used in this Stipulation include documents provided by a party or witness in response to a subpoena duces tecum, an Interrogatory, a Request for Admission, a Request for Production of Documents, or as a Deposition Exhibit.

b. This Stipulation applies to all documents produced prior to the earliest date of signing the Stipulation. It shall also apply to documents produced after the Stipulation is signed, unless counsel for a party informs all other counsel that document copies are not acceptable. Such notification, to be effective, shall be sent no later than ten (10) days after this Stipulation is filed or the document is produced, whichever is later.

2. All documents produced during discovery are deemed authentic. Documents produced after the earliest date of signing the Stipulation will be deemed authentic unless notification to the contrary is made in the manner described in subparagraph 1(b), above.

3. All documents produced during discovery are deemed admissible as business records, or otherwise subject to an exception to the hearsay rule, such as official writing, admission of a party, etc. This Stipulation does not waive a party's right to object to any document as being irrelevant, confusing, prejudicial (California Evidence Code §352), or immaterial. Nor does this Stipulation

bar a party from objecting to portions of the documents as "hearsay within hearsay." Documents produced after the earliest date of signing the Stipulation will be deemed admissible as described above, unless notification to the contrary is made in the manner described in subparagraph 1(b), above.

4. Interrogatory Answers and Admissions, if otherwise admissible, may be presented to the jury by reading from true copies of the original documents, without the necessity of calling the person subscribing to or verifying the Answers or Admissions.

5. All parties desire the Court to enter an Order permitting the filing of Interrogatories, Requests for Admissions, Depositions, and all responses or objections to Interrogatories and Requests for Admissions.

SO STIPULATED:

Date: \_\_\_\_\_  
\_\_[Signature]\_\_  
--[Typed name]--

GREEN & COE

Attorney for Plaintiff

Date: \_\_\_\_\_  
\_\_[Signature]\_\_

BROWN & WHITE

--[Typed name]--

Attorney for defendant

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**Source:** Civil Litigation/Preparing for Trial (Action Guide)/TABLE OF STATUTES AND RULES

TABLE OF STATUTES AND RULES

CALIFORNIA

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