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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2842

Introduced by Assembly Member Harman

February 25, 2002

An act to amend Sections 2020, 2025, and 2025.5 of the Code of Civil Procedure, relating to depositions.

LEGISLATIVE COUNSEL'S DIGEST

AB 2842, as amended, Harman. Depositions: recordings.

Under existing law, a person who is not a party to an action may be compelled to provide discovery in the action by means of a deposition subpoena. Existing law provides that a deposition subpoena that commands only the attendance and testimony of the deponent is required to specify certain information, including whether the deposition will be recorded by videotape.

This bill also would require the deposition subpoena to specify whether the deposition will be recorded by audio or video technology or whether the deposition will be conducted using instant visual display.

Existing law provides that any party may obtain discovery by taking in California the oral deposition of any person after having served

written notice to the deponent, as specified. Existing law requires the deposition notice to include, among other things, any intention to record the testimony by videotape and any intention to record the testimony by stenographic method through the instant visual display of the testimony.

This bill would revise that provision to instead require the deposition notice to include any intention by the party noticing the deposition to record the testimony by video technology and any intention to record the testimony by stenographic method through the instant visual display of the testimony ~~including through instant visual display on the Internet.~~

Existing law provides that the deposition is required to be conducted under the supervision of an officer who is authorized to administer an oath. Existing law prohibits a deposition officer from suspending the taking of testimony without stipulation of the party conducting the deposition and the deponent, unless any party attending the deposition demands that suspension for certain reasons.

This bill would instead provide that the deposition officer may ~~go off the record only upon~~ *not suspend the taking of testimony without the stipulation from of all parties present, except as specified.* The bill would also authorize any party attending the deposition, including the deponent, to demand the deposition officer to suspend taking testimony, as specified.

Existing law provides that unless the court issues an order to the contrary, a copy of a transcript videotape or other recording of the testimony at the deposition, if still in the possession of the deposition officer, is required to be made available to any person requesting a copy upon payment of a reasonable charge.

This bill would revise that provision to require that unless the court issues an order to the contrary, a copy of a transcript of the deposition testimony, or audio or video recording of the deposition testimony made by, or at the ~~discretion~~ *direction* of, any party, if still in the possession of the deposition officer, is to be made available to any person requesting a copy upon payment of a reasonable charge.

Existing law regulates the stenographic recording of depositions, including recording by audiotape or videotape, as specified and requires that the deposition notice include specified information, including any intention to record the testimony by audiotape or videotape in addition to the stenographic method, and any intention to record the testimony by instant visual display of the testimony.

This bill would specify that any party or attorney requesting the provision of the instant visual display of deposition testimony, rough



draft transcripts, or other, specified services or products provided by a deposition officer shall pay the reasonable cost of those services, which may be no greater than the costs charged to any other party or attorney.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2020 of the Code of Civil Procedure is
2 amended to read:

3 2020. (a) The method for obtaining discovery within the state
4 from one who is not a party to the action is an oral deposition under
5 Section 2025, a written deposition under Section 2028, or a
6 deposition for production of business records and things under
7 subdivisions (d) and (e). Except as provided in paragraph (1) of
8 subdivision (h) of Section 2025, the process by which a nonparty
9 is required to provide discovery is a deposition subpoena. The
10 deposition subpoena may command any of the following:

11 (1) Only the attendance and the testimony of the deponent,
12 under subdivision (c).

13 (2) Only the production of business records for copying, under
14 subdivision (d).

15 (3) Both the attendance and the testimony of the deponent, as
16 well as the production of business records, other documents, and
17 tangible things, under subdivision (e).

18 Except as modified in this section, the provisions of Chapter 2
19 (commencing with Section 1985), and of Article 4 (commencing
20 with Section 1560) of Chapter 2 of Division 11 of the Evidence
21 Code, apply to a deposition subpoena.

22 (b) The clerk of the court in which the action is pending shall
23 issue a deposition subpoena signed and sealed, but otherwise in
24 blank, to a party requesting it, who shall fill it in before service. In
25 lieu of the court-issued deposition subpoena, an attorney of record
26 for any party may sign and issue a deposition subpoena; the
27 deposition subpoena in that case need not be sealed, a copy may
28 be served on the nonparty, and the attorney may retain the original.

29 (c) A deposition subpoena that commands only the attendance
30 and the testimony of the deponent shall specify the time when and
31 the place where the deponent is commanded to attend for the
32 deposition. It shall set forth a summary of (1) the nature of a



1 deposition, (2) the rights and duties of the deponent, and (3) the
2 penalties for disobedience of a deposition subpoena described in
3 subdivision (h). If the deposition will be recorded using audio or
4 video technology by, or at the direction of, the noticing party under
5 paragraph (2) of subdivision (l) of Section 2025, the deposition
6 subpoena shall state that it will be recorded in that manner. If the
7 deposition testimony will be conducted using instant visual
8 display, ~~including display on the Internet~~, the deposition subpoena
9 shall state that it will be conducted in that manner. If the deponent
10 is an organization, the deposition subpoena shall describe with
11 reasonable particularity the matters on which examination is
12 requested, and shall advise that organization of its duty to make the
13 designation of employees or agents who will attend described in
14 subdivision (d) of Section 2025.

15 (d) (1) A deposition subpoena that commands only the
16 production of business records for copying shall designate the
17 business records to be produced either by specifically describing
18 each individual item or by reasonably particularizing each
19 category of item; however, specific information identifiable only
20 to the deponent's records system, such as a policy number or the
21 date the consumer interacted with the witness, shall not be
22 required. This deposition subpoena need not be accompanied by
23 an affidavit or declaration showing good cause for the production
24 of the business records designated in it. It shall be directed to the
25 custodian of those records or another person qualified to certify the
26 records. It shall command compliance in accordance with
27 paragraph (4) on a date that is no earlier than 20 days after the
28 issuance, or 15 days after the service, of the deposition subpoena,
29 whichever date is later.

30 (2) If, under Section 1985.3 or 1985.6, the one to whom the
31 deposition subpoena is directed is a witness, and the business
32 records described in the deposition subpoena are personal records
33 pertaining to a consumer, the service of the deposition subpoena
34 shall be accompanied either by a copy of the proof of service of the
35 notice to the consumer described in subdivision (e) of Section
36 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by
37 the consumer's written authorization to release personal records
38 described in paragraph (2) of subdivision (c) of Section 1985.3, or
39 paragraph (2) of subdivision (c) of Section 1985.6, as applicable.



1 (3) The officer for a deposition seeking discovery only of
2 business records for copying under this subdivision shall be a
3 professional photocopier registered under Chapter 20
4 (commencing with Section 22450) of Division 8 of the Business
5 and Professions Code, or a person exempted from the registration
6 requirements of that chapter under Section 22451 of the Business
7 and Professions Code. This deposition officer shall not be
8 financially interested in the action, or a relative or employee of any
9 attorney of the parties. Any objection to the qualifications of the
10 deposition officer is waived unless made before the date of
11 production or as soon thereafter as the ground for that objection
12 becomes known or could be discovered by reasonable diligence.

13 (4) Unless directed to make the records available for inspection
14 or copying by the subpoenaing party's attorney or a representative
15 of that attorney at the witness' business address under subdivision
16 (e) of Section 1560 of the Evidence Code, the custodian of the
17 records or other qualified person shall, in person, by messenger,
18 or by mail, deliver only to the deposition officer specified in the
19 deposition subpoena (1) a true, legible, and durable copy of the
20 records, and (2) an affidavit in compliance with Section 1561 of
21 the Evidence Code. If this delivery is made to the office of the
22 deposition officer, the records shall be enclosed, sealed, and
23 directed as described in subdivision (c) of Section 1560 of the
24 Evidence Code. If this delivery is made at the office of the business
25 whose records are the subject of the deposition subpoena, the
26 custodian of those records or other qualified person shall (1)
27 permit the deposition officer specified in the deposition subpoena
28 to make a copy of the originals of the designated business records
29 during normal business hours as defined in subdivision (e) of
30 Section 1560 of the Evidence Code, or (2) deliver to that
31 deposition officer a true, legible, and durable copy of the records
32 on receipt of payment in cash or by check, by or on behalf of the
33 party serving the deposition subpoena, of the reasonable costs of
34 preparing that copy, and an itemized statement for the cost of
35 preparation, as determined under subdivision (b) of Section 1563
36 of the Evidence Code. This copy need not be delivered in a sealed
37 envelope. Unless the parties, and if the records are those of a
38 consumer as defined in Section 1985.3 or 1985.6, the consumer,
39 stipulate to an earlier date, the custodian of the records shall not
40 deliver to the deposition officer the records that are the subject of



1 the deposition subpoena prior to the date and time specified in the
2 deposition subpoena. The following legend shall appear in
3 boldface type on the deposition subpoena immediately following
4 the date and time specified for production: “Do not release the
5 requested records to the deposition officer prior to the date and
6 time stated above.”

7 (5) Promptly on or after the deposition date and after the receipt
8 or the making of a copy of business records under this subdivision,
9 the deposition officer shall provide that copy to the party at whose
10 instance the deposition subpoena was served, and a copy of those
11 records to any other party to the action who then or subsequently,
12 within a period of six months following the settlement of the case,
13 notifies the deposition officer that the party desires to purchase a
14 copy of those records.

15 (6) The provisions of Section 1562 of the Evidence Code
16 concerning the admissibility of the affidavit of the custodian or
17 other qualified person apply to a deposition subpoena served under
18 this subdivision.

19 (e) A deposition subpoena that commands both the attendance
20 and the testimony of the deponent, as well as the production of
21 business records, documents, and tangible things, shall (1) comply
22 with the requirements of subdivision (c), (2) designate the business
23 records, documents, and tangible things to be produced either by
24 specifically describing each individual item or by reasonably
25 particularizing each category of item, and (3) specify any testing
26 or sampling that is being sought. This deposition subpoena need
27 not be accompanied by an affidavit or declaration showing good
28 cause for the production of the documents and things designated.

29 Where, as described in Section 1985.3, the person to whom the
30 deposition subpoena is directed is a witness, and the business
31 records described in the deposition subpoena are personal records
32 pertaining to a consumer, the service of the deposition subpoena
33 shall be accompanied either by a copy of the proof of service of the
34 notice to the consumer described in subdivision (e) of Section
35 1985.3, or by the consumer’s written authorization to release
36 personal records described in paragraph (2) of subdivision (c) of
37 Section 1985.3.

38 (f) Subject to paragraph (1) of subdivision (d), service of a
39 deposition subpoena shall be effected a sufficient time in advance
40 of the deposition to provide the deponent a reasonable opportunity



1 to locate and produce any designated business records, documents,
2 and tangible things, as described in subdivision (d), and, where
3 personal attendance is commanded, a reasonable time to travel to
4 the place of deposition. Any person may serve the subpoena by
5 personal delivery of a copy of it (1) if the deponent is a natural
6 person, to that person, and (2) if the deponent is an organization,
7 to any officer, director, custodian of records, or to any agent or
8 employee authorized by the organization to accept service of a
9 subpoena.

10 If a deposition subpoena requires the personal attendance of the
11 deponent, under subdivision (c) or (e), the party noticing the
12 deposition shall pay to the deponent in cash or by check the same
13 witness fee and mileage required by Chapter 1 (commencing with
14 Section 68070) of Title 8 of the Government Code for attendance
15 and testimony before the court in which the action is pending. This
16 payment, whether or not demanded by the deponent, shall be
17 made, at the option of the party noticing the deposition, either at
18 the time of service of the deposition subpoena, or at the time the
19 deponent attends for the taking of testimony.

20 Service of a deposition subpoena that does not require the
21 personal attendance of a custodian of records or other qualified
22 person, under subdivision (d), shall be accompanied, whether or
23 not demanded by the deponent, by a payment in cash or by check
24 of the witness fee required by paragraph (6) of subdivision (b) of
25 Section 1563 of the Evidence Code.

26 (g) Personal service of any deposition subpoena is effective to
27 require of any deponent who is a resident of California at the time
28 of service (1) personal attendance and testimony, if the subpoena
29 so specifies, (2) any specified production, inspection, testing, and
30 sampling, and (3) the deponent's attendance at a court session to
31 consider any issue arising out of the deponent's refusal to be
32 sworn, or to answer any question, or to produce specified items,
33 or to permit inspection or photocopying, if the subpoena so
34 specifies, or specified testing and sampling of the items produced.

35 (h) A deponent who disobeys a deposition subpoena in any
36 manner described in subdivision (g) may be punished for contempt
37 under Section 2023 without the necessity of a prior order of court
38 directing compliance by the witness, and is subject to the forfeiture
39 and the payment of damages set forth in Section 1992.



1 SEC. 2. Section 2025 of the Code of Civil Procedure is
2 amended to read:

3 2025. (a) Any party may obtain discovery within the scope
4 delimited by Section 2017, and subject to the restrictions set forth
5 in Section 2019, by taking in California the oral deposition of any
6 person, including any party to the action. The person deposed may
7 be a natural person, an organization such as a public or private
8 corporation, a partnership, an association, or a governmental
9 agency.

10 (b) Subject to subdivisions (f) and (t), an oral deposition may
11 be taken as follows:

12 (1) The defendant may serve a deposition notice without leave
13 of court at any time after that defendant has been served or has
14 appeared in the action, whichever occurs first.

15 (2) The plaintiff may serve a deposition notice without leave of
16 court on any date that is 20 days after the service of the summons
17 on, or appearance by, any defendant. However, on motion with or
18 without notice, the court, for good cause shown, may grant to a
19 plaintiff leave to serve a deposition notice on an earlier date.

20 (c) A party desiring to take the oral deposition of any person
21 shall give notice in writing in the manner set forth in subdivision
22 (d). However, where under subdivision (d) of Section 2020 only
23 the production by a nonparty of business records for copying is
24 desired, a copy of the deposition subpoena shall serve as the notice
25 of deposition. The notice of deposition shall be given to every
26 other party who has appeared in the action. The deposition notice,
27 or the accompanying proof of service, shall list all the parties or
28 attorneys for parties on whom it is served.

29 Where, as defined in subdivision (a) of Section 1985.3, the party
30 giving notice of the deposition is a subpoenaing party, and the
31 deponent is a witness commanded by a deposition subpoena to
32 produce personal records of a consumer, the subpoenaing party
33 shall serve on that consumer (1) a notice of the deposition, (2) the
34 notice of privacy rights specified in subdivision (e) of Section
35 1985.3 and in Section 1985.6, and (3) a copy of the deposition
36 subpoena.

37 (d) The deposition notice shall state all of the following:

38 (1) The address where the deposition will be taken.

39 (2) The date of the deposition, selected under subdivision (f),
40 and the time it will commence.



1 (3) The name of each deponent, and the address and telephone
2 number, if known, of any deponent who is not a party to the action.
3 If the name of the deponent is not known, the deposition notice
4 shall set forth instead a general description sufficient to identify
5 the person or particular class to which the person belongs.

6 (4) The specification with reasonable particularity of any
7 materials or category of materials to be produced by the deponent.

8 (5) Any intention by the party noticing the deposition to record
9 the testimony by audio or video technology, in addition to
10 recording the testimony by the stenographic method as required by
11 paragraph (1) of subdivision (l) and any intention to record the
12 testimony by stenographic method through the instant visual
13 display of the testimony, ~~including through instant visual display~~
14 ~~on the Internet.~~ If the deposition will be conducted using instant
15 visual display, a copy of the deposition notice shall also be given
16 to the deposition officer. Any offer to provide the instant visual
17 display of the testimony or to provide rough draft transcripts to any
18 party which is accepted prior to, or offered at, the deposition shall
19 also be made by the deposition officer at the deposition to all
20 parties in attendance. ~~Any party or attorney requesting the~~
21 ~~provision of the instant visual display of the testimony, or rough~~
22 ~~draft transcripts, shall pay the reasonable cost of those services,~~
23 ~~which may be no greater than the costs charged to any other party~~
24 ~~or attorney.~~

25 (6) Any intention to reserve the right to use at trial a video
26 recording of the deposition testimony of a treating or consulting
27 physician or of any expert witness under paragraph (4) of
28 subdivision (u). In this event, the operator of the video camera
29 shall be a person who is authorized to administer an oath, and shall
30 not be financially interested in the action or be a relative or
31 employee of any attorney of any of the parties.

32 If the deponent named is not a natural person, the deposition
33 notice shall describe with reasonable particularity the matters on
34 which examination is requested. In that event, the deponent shall
35 designate and produce at the deposition those of its officers,
36 directors, managing agents, employees, or agents who are most
37 qualified to testify on its behalf as to those matters to the extent of
38 any information known or reasonably available to the deponent.
39 A deposition subpoena shall advise a nonparty deponent of its duty



1 to make this designation, and shall describe with reasonable
2 particularity the matters on which examination is requested.

3 If the attendance of the deponent is to be compelled by service
4 of a deposition subpoena under Section 2020, an identical copy of
5 that subpoena shall be served with the deposition notice.

6 (e) (1) The deposition of a natural person, whether or not a
7 party to the action, shall be taken at a place that is, at the option of
8 the party giving notice of the deposition, either within 75 miles of
9 the deponent's residence, or within the county where the action is
10 pending and within 150 miles of the deponent's residence, unless
11 the court orders otherwise under paragraph (3).

12 (2) The deposition of an organization that is a party to the action
13 shall be taken at a place that is, at the option of the party giving
14 notice of the deposition, either within 75 miles of the
15 organization's principal executive or business office in California,
16 or within the county where the action is pending and within 150
17 miles of that office. The deposition of any other organization shall
18 be taken within 75 miles of the organization's principal executive
19 or business office in California, unless the organization consents
20 to a more distant place. If the organization has not designated a
21 principal executive or business office in California, the deposition
22 shall be taken at a place that is, at the option of the party giving
23 notice of the deposition, either within the county where the action
24 is pending, or within 75 miles of any executive or business office
25 in California of the organization.

26 (3) A party desiring to take the deposition of a natural person
27 who is a party to the action or an officer, director, managing agent,
28 or employee of a party may make a motion for an order that the
29 deponent attend for deposition at a place that is more distant than
30 that permitted under paragraph (1). This motion shall be
31 accompanied by a declaration stating facts showing a reasonable
32 and good faith attempt at an informal resolution of any issue
33 presented by the motion.

34 In exercising its discretion to grant or deny this motion, the court
35 shall take into consideration any factor tending to show whether
36 the interests of justice will be served by requiring the deponent's
37 attendance at that more distant place, including, but not limited to,
38 the following:

39 (A) Whether the moving party selected the forum.



1 (B) Whether the deponent will be present to testify at the trial
2 of the action.

3 (C) The convenience of the deponent.

4 (D) The feasibility of conducting the deposition by written
5 questions under Section 2028, or of using a discovery method
6 other than a deposition.

7 (E) The number of depositions sought to be taken at a place
8 more distant than that permitted under paragraph (1).

9 (F) The expense to the parties of requiring the deposition to be
10 taken within the distance permitted under paragraph (1).

11 (G) The whereabouts of the deponent at the time for which the
12 deposition is scheduled.

13 The order may be conditioned on the advancement by the
14 moving party of the reasonable expenses and costs to the deponent
15 for travel to the place of deposition.

16 The court shall impose a monetary sanction under Section 2023
17 against any party, person, or attorney who unsuccessfully makes
18 or opposes a motion to increase travel limits for party deponent,
19 unless it finds that the one subject to the sanction acted with
20 substantial justification or that other circumstances make the
21 imposition of the sanction unjust.

22 (f) An oral deposition shall be scheduled for a date at least 10
23 days after service of the deposition notice. If, as defined in
24 subdivision (a) of Section 1985.3, the party giving notice of the
25 deposition is a subpoenaing party, and the deponent is a witness
26 commanded by a deposition subpoena to produce personal records
27 of a consumer, the deposition shall be scheduled for a date at least
28 20 days after issuance of that subpoena. However, in unlawful
29 detainer actions, an oral deposition shall be scheduled for a date at
30 least five days after service of the deposition notice, but not later
31 than five days before trial.

32 On motion or ex parte application of any party or deponent, for
33 good cause shown, the court may shorten or extend the time for
34 scheduling a deposition, or may stay its taking until the
35 determination of a motion for a protective order under subdivision
36 (i).

37 (g) Any party served with a deposition notice that does not
38 comply with subdivisions (b) to (f), inclusive, waives any error or
39 irregularity unless that party promptly serves a written objection
40 specifying that error or irregularity at least three calendar days



1 prior to the date for which the deposition is scheduled, on the party
2 seeking to take the deposition and any other attorney or party on
3 whom the deposition notice was served. If an objection is made
4 three calendar days before the deposition date, the objecting party
5 shall make personal service of that objection pursuant to Section
6 1011 on the party who gave notice of the deposition. Any
7 deposition taken after the service of a written objection shall not
8 be used against the objecting party under subdivision (u) if the
9 party did not attend the deposition and if the court determines that
10 the objection was a valid one.

11 In addition to serving this written objection, a party may also
12 move for an order staying the taking of the deposition and
13 quashing the deposition notice. This motion shall be accompanied
14 by a declaration stating facts showing a reasonable and good faith
15 attempt at an informal resolution of any issue presented by the
16 motion. The taking of the deposition is stayed pending the
17 determination of this motion.

18 The court shall impose a monetary sanction under Section 2023
19 against any party, person, or attorney who unsuccessfully makes
20 or opposes a motion to quash a deposition notice, unless it finds
21 that the one subject to the sanction acted with substantial
22 justification or that other circumstances make the imposition of the
23 sanction unjust.

24 (h) (1) The service of a deposition notice under subdivision (c)
25 is effective to require any deponent who is a party to the action or
26 an officer, director, managing agent, or employee of a party to
27 attend and to testify, as well as to produce any document or
28 tangible thing for inspection and copying.

29 (2) The attendance and testimony of any other deponent, as
30 well as the production by the deponent of any document or tangible
31 thing for inspection and copying, requires the service on the
32 deponent of a deposition subpoena under Section 2020.

33 (3) A person may take, and any person other than the deponent
34 may attend, a deposition by telephone or other remote electronic
35 means. The court may expressly provide that a nonparty deponent
36 may appear at his or her deposition by telephone if it finds there
37 is good cause and no prejudice to any party. A party deponent shall
38 appear at his or her deposition in person and be in the presence of
39 the deposition officer. The procedures to implement this section



1 shall be established by court order in the specific action proceeding
2 or by the California Rules of Court.

3 (i) Before, during, or after a deposition, any party, any
4 deponent, or any other affected natural person or organization may
5 promptly move for a protective order. The motion shall be
6 accompanied by a declaration stating facts showing a reasonable
7 and good faith attempt at an informal resolution of each issue
8 presented by the motion.

9 The court, for good cause shown, may make any order that
10 justice requires to protect any party, deponent, or other natural
11 person or organization from unwarranted annoyance,
12 embarrassment, or oppression, or undue burden and expense. This
13 protective order may include, but is not limited to, one or more of
14 the following directions:

15 (1) That the deposition not be taken at all.

16 (2) That the deposition be taken at a different time.

17 (3) That a video recording of the deposition testimony of a
18 treating or consulting physician or of any expert witness, intended
19 for possible use at trial under paragraph (4) of subdivision (u), be
20 postponed until the moving party has had an adequate opportunity
21 to prepare, by discovery deposition of the deponent, or other
22 means, for cross-examination.

23 (4) That the deposition be taken at a place other than that
24 specified in the deposition notice, if it is within a distance
25 permitted by subdivision (e).

26 (5) That the deposition be taken only on certain specified terms
27 and conditions.

28 (6) That the deponent's testimony be taken by written, instead
29 of oral, examination.

30 (7) That the method of discovery be interrogatories to a party
31 instead of an oral deposition.

32 (8) That the testimony be recorded in a manner different from
33 that specified in the deposition notice.

34 (9) That certain matters not be inquired into.

35 (10) That the scope of the examination be limited to certain
36 matters.

37 (11) That all or certain of the writings or tangible things
38 designated in the deposition notice not be produced, inspected, or
39 copied.



1 (12) That designated persons, other than the parties to the
2 action and their officers and counsel, be excluded from attending
3 the deposition.

4 (13) That a trade secret or other confidential research,
5 development, or commercial information not be disclosed or be
6 disclosed only to specified persons or only in a specified way.

7 (14) That the parties simultaneously file specified documents
8 enclosed in sealed envelopes to be opened as directed by the court.

9 (15) That the deposition be sealed and thereafter opened only
10 on order of the court.

11 If the motion for a protective order is denied in whole or in part,
12 the court may order that the deponent provide or permit the
13 discovery against which protection was sought on those terms and
14 conditions that are just.

15 The court shall impose a monetary sanction under Section 2023
16 against any party, person, or attorney who unsuccessfully makes
17 or opposes a motion for a protective order, unless it finds that the
18 one subject to the sanction acted with substantial justification or
19 that other circumstances make the imposition of the sanction
20 unjust.

21 (j) (1) If the party giving notice of a deposition fails to attend
22 or proceed with it, the court shall impose a monetary sanction
23 under Section 2023 against that party, or the attorney for that party,
24 or both, and in favor of any party attending in person or by
25 attorney, unless it finds that the one subject to the sanction acted
26 with substantial justification or that other circumstances make the
27 imposition of the sanction unjust.

28 (2) If a deponent does not appear for a deposition because the
29 party giving notice of the deposition failed to serve a required
30 deposition subpoena, the court shall impose a monetary sanction
31 under Section 2023 against that party, or the attorney for that party,
32 or both, in favor of any other party who, in person or by attorney,
33 attended at the time and place specified in the deposition notice in
34 the expectation that the deponent's testimony would be taken,
35 unless the court finds that the one subject to the sanction acted with
36 substantial justification or that other circumstances make the
37 imposition of the sanction unjust.

38 If a deponent on whom a deposition subpoena has been served
39 fails to attend a deposition or refuses to be sworn as a witness, the



1 court may impose on the deponent the sanctions described in
2 subdivision (h) of Section 2020.

3 (3) If, after service of a deposition notice, a party to the action
4 or an officer, director, managing agent, or employee of a party, or
5 a person designated by an organization that is a party under
6 subdivision (d), without having served a valid objection under
7 subdivision (g), fails to appear for examination, or to proceed with
8 it, or to produce for inspection any document or tangible thing
9 described in the deposition notice, the party giving the notice may
10 move for an order compelling the deponent's attendance and
11 testimony, and the production for inspection of any document or
12 tangible thing described in the deposition notice. This motion (A)
13 shall set forth specific facts showing good cause justifying the
14 production for inspection of any document or tangible thing
15 described in the deposition notice, and (B) shall be accompanied
16 by a declaration stating facts showing a reasonable and good faith
17 attempt at an informal resolution of each issue presented by it or,
18 when the deponent fails to attend the deposition and produce the
19 documents or things described in the deposition notice, by a
20 declaration stating that the petitioner has contacted the deponent
21 to inquire about the nonappearance. If this motion is granted, the
22 court shall also impose a monetary sanction under Section 2023
23 against the deponent or the party with whom the deponent is
24 affiliated, unless it finds that the one subject to the sanction acted
25 with substantial justification or that other circumstances make the
26 imposition of the sanction unjust. On motion of any other party
27 who, in person or by attorney, attended at the time and place
28 specified in the deposition notice in the expectation that the
29 deponent's testimony would be taken, the court shall also impose
30 a monetary sanction under Section 2023, unless it finds that the one
31 subject to the sanction acted with substantial justification or that
32 other circumstances make the imposition of the sanction unjust.

33 If that party or party-affiliated deponent then fails to obey an
34 order compelling attendance, testimony, and production, the court
35 may make those orders that are just, including the imposition of an
36 issue sanction, an evidence sanction, or a terminating sanction
37 under Section 2023 against that party deponent or against the party
38 with whom the deponent is affiliated. In lieu of, or in addition to,
39 this sanction, the court may impose a monetary sanction under
40 Section 2023 against that deponent or against the party with whom



1 that party deponent is affiliated, and in favor of any party who, in
2 person or by attorney, attended in the expectation that the
3 deponent's testimony would be taken pursuant to that order.

4 (k) Except as provided in paragraph (3) of subdivision (d) of
5 Section 2020, the deposition shall be conducted under the
6 supervision of an officer who is authorized to administer an oath
7 and is subject to all of the following requirements:

8 (1) The officer shall not be financially interested in the action
9 and shall not be a relative or employee of any attorney of the
10 parties, or of any of the parties.

11 (2) Services and products offered or provided by the deposition
12 officer or the entity providing the services of the deposition officer
13 to any party or to any party's attorney or third party who is
14 financing all or part of the action shall be offered to all parties or
15 their attorneys attending the deposition. No service or product may
16 be offered or provided by the deposition officer or by the entity
17 providing the services of the deposition officer to any party or any
18 party's attorney or third party who is financing all or part of the
19 action unless the service or product is offered or provided to all
20 parties or their attorneys attending the deposition. All services and
21 products offered or provided shall be made available at the same
22 time to all parties or their attorneys. Any party or attorney
23 requesting these products or services shall pay the reasonable costs
24 of these products or services, which may be no greater than the
25 costs charged to any other party or attorney.

26 (3) The deposition officer or the entity providing the services
27 of the deposition officer shall not provide to any party or any
28 party's attorney or third party who is financing all or part of the
29 action any service or product consisting of the deposition officer's
30 notations or comments regarding the demeanor of any witness,
31 attorney, or party present at the deposition. The deposition officer
32 or entity providing the services of the deposition officer shall not
33 collect any personal identifying information about the witness as
34 a service or product to be provided to any party or third party who
35 is financing all or part of the action.

36 (4) Upon the request of any party or any party's attorney
37 attending a deposition, any party or any party's attorney attending
38 the deposition shall enter in the record of the deposition all services
39 and products made available to that party or party's attorney or
40 third party who is financing all or part of the action by the



1 deposition officer or by the entity providing the services of the
2 deposition officer. A party in the action who is not represented by
3 an attorney shall be informed by the noticing party or the party's
4 attorney that the unrepresented party may request this statement.

5 (5) Any objection to the qualifications of the deposition officer
6 shall be waived unless made before the deposition begins or as
7 soon thereafter as the ground for that objection becomes known or
8 could be discovered by reasonable diligence.

9 (l) (1) The deposition officer shall put the deponent under
10 oath. Unless the parties agree or the court orders otherwise, the
11 testimony, as well as any stated objections, shall be taken
12 stenographically. The party noticing the deposition may also
13 record the testimony by audio or video technology if the notice of
14 deposition stated an intention also to record the testimony by either
15 of those methods, or if all the parties agree that the testimony may
16 also be recorded by either of those methods. Any other party, at
17 that party's expense, may make a simultaneous audio or video
18 record of the deposition, provided that other party promptly, and
19 in no event less than three calendar days before the date for which
20 the deposition is scheduled, serves a written notice of this intention
21 to make an audio or video record of the deposition testimony on
22 the party or attorney who noticed the deposition, on all other
23 parties or attorneys on whom the deposition notice was served
24 under subdivision (c), and on any deponent whose attendance is
25 being compelled by a deposition subpoena under Section 2020. If
26 this notice is given three calendar days before the deposition date,
27 it shall be made by personal service under Section 1011.
28 Examination and cross-examination of the deponent shall proceed
29 as permitted at trial under the provisions of the Evidence Code.

30 (2) If the deposition is being recorded by means of audio or
31 video technology by, or at the direction of, any party, the following
32 procedure shall be observed:

33 (A) The area used for recording the deponent's oral testimony
34 shall be suitably large, adequately lighted, and reasonably quiet.

35 (B) The operator of the recording equipment shall be
36 competent to set up, operate, and monitor the equipment in the
37 manner prescribed in this subdivision. The operator may be an
38 employee of the attorney taking the deposition unless the operator
39 is also the deposition officer. However, if a video recording of
40 deposition testimony is to be used under paragraph (4) of



1 subdivision (u), the operator of the recording equipment shall be
2 a person who is authorized to administer an oath, and shall not be
3 financially interested in the action or be a relative or employee of
4 any attorney of any of the parties, unless all parties attending the
5 deposition agree on the record to waive these qualifications and
6 restrictions. Services and products offered or provided by the
7 deposition officer or the entity providing the services of the
8 deposition officer to any party or to any party's attorney or third
9 party who is financing all or part of the action shall be offered or
10 provided to all parties or their attorneys attending the deposition.
11 No service or product may be offered or provided by the deposition
12 officer or by the entity providing the services of the deposition
13 officer to any party or any party's attorney or third party who is
14 financing all or part of the action unless the service or product is
15 offered or provided to all parties or their attorneys attending the
16 deposition. All services and products offered or provided shall be
17 made available at the same time to all parties or their attorneys.
18 Any party or attorney requesting these products or services shall
19 pay the reasonable costs of these products or services, which may
20 be no greater than the costs charged to any other party or attorney.
21 The deposition officer or the entity providing the services of the
22 deposition officer shall not provide to any party or any other
23 person or entity any service or product consisting of the deposition
24 officer's notations or comments regarding the demeanor of any
25 witness, attorney, or party present at the deposition. The deposition
26 officer or the entity providing the services of the deposition officer
27 shall not collect any personal identifying information about the
28 witness as a service or product to be provided to any party or third
29 party who is financing all or part of the action. Upon the request
30 of any party or any party's attorney attending a deposition, any
31 party or any party's attorney attending the deposition shall enter
32 in the record of the deposition all services and products made
33 available to that party or party's attorney or third party who is
34 financing all or part of the action by the deposition officer or by
35 the entity providing the services of the deposition officer. A party
36 in the action who is not represented by an attorney shall be
37 informed by the noticing party that the unrepresented party may
38 request this statement.



1 (C) The operator shall not distort the appearance or the
2 demeanor of participants in the deposition by the use of camera or
3 sound recording techniques.

4 (D) The deposition shall begin with an oral or written statement
5 on camera or on the audio recording that includes the operator's
6 name and business address, the name and business address of the
7 operator's employer, the date, time, and place of the deposition,
8 the caption of the case, the name of the deponent, a specification
9 of the party on whose behalf the deposition is being taken, and any
10 stipulations by the parties.

11 (E) Counsel for the parties shall identify themselves on camera
12 or on the audio recording.

13 (F) The oath shall be administered to the deponent on camera
14 or on the audio recording.

15 (G) If the length of a deposition requires the use of more than
16 one unit of tape or electronic storage, the end of each unit and the
17 beginning of each succeeding unit shall be announced on camera
18 or on the audio recording.

19 (H) At the conclusion of a deposition, a statement shall be made
20 on camera or on the audio recording that the deposition is ended
21 and shall set forth any stipulations made by counsel concerning the
22 custody of the audiotape or videotape recording and the exhibits,
23 or concerning other pertinent matters.

24 (I) A party intending to offer an audio or video recording of a
25 deposition in evidence under subdivision (u) shall notify the court
26 and all parties in writing of that intent and of the parts of the
27 deposition to be offered within sufficient time for objections to be
28 made and ruled on by the judge to whom the case is assigned for
29 trial or hearing, and for any editing of the recording. Objections to
30 all or part of the deposition shall be made in writing. The court may
31 permit further designations of testimony and objections as justice
32 may require. With respect to those portions of an audio or video
33 record of deposition testimony that are not designated by any party
34 or that are ruled to be objectionable, the court may order that the
35 party offering the recording of the deposition at the trial or hearing
36 suppress those portions, or that an edited version of the deposition
37 recording be prepared for use at the trial or hearing. The original
38 audio or video record of the deposition shall be preserved
39 unaltered. If no stenographic record of the deposition testimony
40 has previously been made, the party offering a videotape or an



1 audiotape recording of that testimony under subdivision (u) shall
2 accompany that offer with a stenographic transcript prepared from
3 that recording.

4 (3) In lieu of participating in the oral examination, parties may
5 transmit written questions in a sealed envelope to the party taking
6 the deposition for delivery to the deposition officer, who shall
7 unseal the envelope and propound them to the deponent after the
8 oral examination has been completed.

9 (m) (1) The protection of information from discovery on the
10 ground that it is privileged or that it is a protected work product
11 under Section 2018 is waived unless a specific objection to its
12 disclosure is timely made during the deposition.

13 (2) Errors and irregularities of any kind occurring at the oral
14 examination that might be cured if promptly presented are waived
15 unless a specific objection to them is timely made during the
16 deposition. These errors and irregularities include, but are not
17 limited to, those relating to the manner of taking the deposition, to
18 the oath or affirmation administered, to the conduct of a party,
19 attorney, deponent, or deposition officer, or to the form of any
20 question or answer. Unless the objecting party demands that the
21 taking of the deposition be suspended to permit a motion for a
22 protective order under subdivision (n), the deposition shall
23 proceed subject to the objection.

24 (3) Objections to the competency of the deponent, or to the
25 relevancy, materiality, or admissibility at trial of the testimony or
26 of the materials produced are unnecessary and are not waived by
27 failure to make them before or during the deposition.

28 (4) If a deponent fails to answer any question or to produce any
29 document or tangible thing under the deponent's control that is
30 specified in the deposition notice or a deposition subpoena, the
31 party seeking that answer or production may adjourn the
32 deposition or complete the examination on other matters without
33 waiving the right at a later time to move for an order compelling
34 that answer or production under subdivision (o).

35 ~~(n) The deposition officer when requested to go off the record~~
36 ~~by any party or the deponent may do so only upon stipulation of~~
37 ~~all the parties present. Any party attending the deposition,~~
38 ~~including the deponent, may demand the deposition officer to~~
39 ~~suspend taking testimony to enable that party or deponent to move~~



1 (n) *The deposition officer may not suspend the taking of*
2 *testimony without the stipulation of all parties present unless any*
3 *party attending the deposition, including the deponent, demands*
4 *that the deposition officer suspend taking the testimony to enable*
5 *that party or deponent to move for a protective order on the ground*
6 *that the examination is being conducted in bad faith or in a manner*
7 *that unreasonably annoys, embarrasses, or oppresses that*
8 *deponent or party. This motion shall be accompanied by a*
9 *declaration stating facts showing a reasonable and good faith*
10 *attempt at an informal resolution of each issue presented by the*
11 *motion. The court, for good cause shown, may terminate the*
12 *examination or may limit the scope and manner of taking the*
13 *deposition as provided in subdivision (i). If the order terminates*
14 *the examination, the deposition shall not thereafter be resumed,*
15 *except on order of the court.*

16 The court shall impose a monetary sanction under Section 2023
17 against any party, person, or attorney who unsuccessfully makes
18 or opposes a motion for this protective order, unless it finds that
19 the one subject to the sanction acted with substantial justification
20 or that other circumstances make the imposition of the sanction
21 unjust.

22 (o) If a deponent fails to answer any question or to produce any
23 document or tangible thing under the deponent's control that is
24 specified in the deposition notice or a deposition subpoena, the
25 party seeking discovery may move the court for an order
26 compelling that answer or production. This motion shall be made
27 no later than 60 days after the completion of the record of the
28 deposition, and shall be accompanied by a declaration stating facts
29 showing a reasonable and good faith attempt at an informal
30 resolution of each issue presented by the motion. Notice of this
31 motion shall be given to all parties, and to the deponent either
32 orally at the examination, or by subsequent service in writing. If
33 the notice of the motion is given orally, the deposition officer shall
34 direct the deponent to attend a session of the court at the time
35 specified in the notice. Not less than five days prior to the hearing
36 on this motion, the moving party shall lodge with the court a
37 certified copy of any parts of the stenographic transcript of the
38 deposition that are relevant to the motion. If a deposition is
39 recorded by audio or video technology, the moving party is
40 required to lodge a certified copy of a transcript of any parts of the



1 deposition that are relevant to the motion. If the court determines
2 that the answer or production sought is subject to discovery, it shall
3 order that the answer be given or the production be made on the
4 resumption of the deposition.

5 The court shall impose a monetary sanction under Section 2023
6 against any party, person, or attorney who unsuccessfully makes
7 or opposes a motion to compel answer or production, unless it
8 finds that the one subject to the sanction acted with substantial
9 justification or that other circumstances make the imposition of the
10 sanction unjust.

11 If a deponent fails to obey an order entered under this
12 subdivision, the failure may be considered a contempt of court. In
13 addition, if the disobedient deponent is a party to the action or an
14 officer, director, managing agent, or employee of a party, the court
15 may make those orders that are just against the disobedient party,
16 or against the party with whom the disobedient deponent is
17 affiliated, including the imposition of an issue sanction, an
18 evidence sanction, or a terminating sanction under Section 2023.
19 In lieu of, or in addition to, this sanction, the court may impose a
20 monetary sanction under Section 2023 against that party deponent
21 or against any party with whom the deponent is affiliated.

22 (p) Unless the parties agree otherwise, the testimony at any
23 deposition recorded by stenographic means shall be transcribed.
24 The party noticing the deposition shall bear the cost of that
25 transcription, unless the court, on motion and for good cause
26 shown, orders that the cost be borne or shared by another party.
27 Notwithstanding paragraph (2) of subdivision (k), any other party
28 or the deponent, at the expense of the party or deponent, may
29 obtain a copy of the transcript. If the deposition officer receives a
30 request from a party for an original or a copy of the deposition
31 transcript, or any portion thereof, and the full or partial transcript
32 will be available to that party prior to the time the original or copy
33 would be available to any other party, the deposition officer shall
34 immediately notify all other parties attending the deposition of the
35 request, and shall, upon request by any party other than the party
36 making the original request, make that copy of the full or partial
37 deposition transcript available to all parties at the same time.
38 Stenographic notes of depositions shall be retained by the reporter
39 for a period of not less than eight years from the date of the
40 deposition, where no transcript is produced, and not less than one



1 year from the date on which the transcript is produced. Those notes
2 may be either on paper or electronic media, as long as it allows for
3 satisfactory production of a transcript at any time during the
4 periods specified. At the request of any other party to the action,
5 including a party who did not attend the taking of the deposition
6 testimony, any party who records or causes the recording of that
7 testimony by means of audio or video technology shall promptly
8 (1) permit that other party to hear the audio recording or to view
9 the video recording, and (2) furnish a copy of the audio or video
10 recording to that other party on receipt of payment of the
11 reasonable cost of making that copy of the recording.

12 If the testimony at the deposition is recorded both
13 stenographically, and by audio or video technology, the
14 stenographic transcript is the official record of that testimony for
15 the purpose of the trial and any subsequent hearing or appeal.

16 (q) (1) If the deposition testimony is stenographically
17 recorded, the deposition officer shall send written notice to the
18 deponent and to all parties attending the deposition when the
19 original transcript of the testimony for each session of the
20 deposition is available for reading, correcting, and signing, unless
21 the deponent and the attending parties agree on the record that the
22 reading, correcting, and signing of the transcript of the testimony
23 will be waived or that the reading, correcting, and signing of a
24 transcript of the testimony will take place after the entire
25 deposition has been concluded or at some other specific time. For
26 30 days following each notice, unless the attending parties and the
27 deponent agree on the record or otherwise in writing to a longer or
28 shorter time period, the deponent may change the form or the
29 substance of the answer to a question, and may either approve the
30 transcript of the deposition by signing it, or refuse to approve the
31 transcript by not signing it.

32 Alternatively, within this same period, the deponent may
33 change the form or the substance of the answer to any question and
34 may approve or refuse to approve the transcript by means of a letter
35 to the deposition officer signed by the deponent which is mailed
36 by certified or registered mail with return receipt requested. A
37 copy of that letter shall be sent by first-class mail to all parties
38 attending the deposition. For good cause shown, the court may
39 shorten the 30-day period for making changes, approving, or
40 refusing to approve the transcript.



1 The deposition officer shall indicate on the original of the
2 transcript, if the deponent has not already done so at the office of
3 the deposition officer, any action taken by the deponent and
4 indicate on the original of the transcript, the deponent's approval
5 of, or failure or refusal to approve, the transcript. The deposition
6 officer shall also notify in writing the parties attending the
7 deposition of any changes which the deponent timely made in
8 person. If the deponent fails or refuses to approve the transcript
9 within the allotted period, the deposition shall be given the same
10 effect as though it had been approved, subject to any changes
11 timely made by the deponent. However, on a seasonable motion
12 to suppress the deposition, accompanied by a declaration stating
13 facts showing a reasonable and good faith attempt at an informal
14 resolution of each issue presented by the motion, the court may
15 determine that the reasons given for the failure or refusal to
16 approve the transcript require rejection of the deposition in whole
17 or in part.

18 The court shall impose a monetary sanction under Section 2023
19 against any party, person, or attorney who unsuccessfully makes
20 or opposes a motion to suppress a deposition, unless it finds that
21 the one subject to the sanction acted with substantial justification
22 or that other circumstances make the imposition of the sanction
23 unjust.

24 (2) If there is no stenographic transcription of the deposition,
25 the deposition officer shall send written notice to the deponent and
26 to all parties attending the deposition that the audio or video
27 recording made by, or at the ~~discretion~~ *direction* of, any party, is
28 available for review, unless the deponent and all these parties agree
29 on the record to waive the hearing or viewing of the audio or video
30 recording of the testimony. For 30 days following this notice the
31 deponent, either in person or by signed letter to the deposition
32 officer, may change the substance of the answer to any question.

33 The deposition officer shall set forth in a writing to accompany
34 the recording any changes made by the deponent, as well as either
35 the deponent's signature identifying the deposition as his or her
36 own, or a statement of the deponent's failure to supply the
37 signature, or to contact the officer within the allotted period. When
38 a deponent fails to contact the officer within the allotted period, or
39 expressly refuses by a signature to identify the deposition as his or
40 her own, the deposition shall be given the same effect as though



1 signed. However, on a reasonable motion to suppress the
2 deposition, accompanied by a declaration stating facts showing a
3 reasonable and good faith attempt at an informal resolution of each
4 issue presented by the motion, the court may determine that the
5 reasons given for the refusal to sign require rejection of the
6 deposition in whole or in part.

7 The court shall impose a monetary sanction under Section 2023
8 against any party, person, or attorney who unsuccessfully makes
9 or opposes a motion to suppress a deposition, unless it finds that
10 the one subject to the sanction acted with substantial justification
11 or that other circumstances make the imposition of the sanction
12 unjust.

13 (r) (1) The deposition officer shall certify on the transcript of
14 the deposition, or in a writing accompanying an audio or video
15 record of deposition testimony as described in paragraph (2) of
16 subdivision (q), that the deponent was duly sworn and that the
17 transcript or recording is a true record of the testimony given.

18 (2) When prepared as a rough draft transcript, the transcript of
19 the deposition may not be certified and may not be used, cited, or
20 transcribed as the certified transcript of the deposition
21 proceedings. The rough draft transcript may not be cited or used
22 in any way or at any time to rebut or contradict the certified
23 transcript of deposition proceedings as provided by the deposition
24 officer.

25 (s) (1) The certified transcript of a deposition shall not be filed
26 with the court. Instead, the deposition officer shall securely seal
27 that transcript in an envelope or package endorsed with the title of
28 the action and marked: “Deposition of (here insert name of
29 deponent),” and shall promptly transmit it to the attorney for the
30 party who noticed the deposition. This attorney shall store it under
31 conditions that will protect it against loss, destruction, or
32 tampering.

33 The attorney to whom the transcript of a deposition is
34 transmitted shall retain custody of it until six months after final
35 disposition of the action. At that time, the transcript may be
36 destroyed, unless the court, on motion of any party and for good
37 cause shown, orders that the transcript be preserved for a longer
38 period.

39 (2) An audio or video record of deposition testimony made by,
40 or at the ~~discretion~~ *direction* of, any party, including a certified



1 tape made by an operator qualified under subparagraph (B) of
2 paragraph (2) of subdivision (l), shall not be filed with the court.
3 Instead, the operator shall retain custody of that record and shall
4 store it under conditions that will protect it against loss,
5 destruction, or tampering, and preserve as far as practicable the
6 quality of the recording and the integrity of the testimony and
7 images it contains.

8 At the request of any party to the action, including a party who
9 did not attend the taking of the deposition testimony, or at the
10 request of the deponent, that operator shall promptly (A) permit
11 the one making the request to hear or to view the recording on
12 receipt of payment of a reasonable charge for providing the
13 facilities for hearing or viewing the recording, and (B) furnish a
14 copy of the audio or video recording to the one making the request
15 on receipt of payment of the reasonable cost of making that copy
16 of the recording.

17 The attorney or operator who has custody of an audio or video
18 record of deposition testimony made by, or at the ~~discretion~~
19 *direction* of, any party, shall retain custody of it until six months
20 after final disposition of the action. At that time, the audio or video
21 recording may be destroyed or erased, unless the court, on motion
22 of any party and for good cause shown, orders that the recording
23 be preserved for a longer period.

24 (t) Once any party has taken the deposition of any natural
25 person, including that of a party to the action, neither the party who
26 gave, nor any other party who has been served with a deposition
27 notice pursuant to subdivision (c) may take a subsequent
28 deposition of that deponent. However, for good cause shown, the
29 court may grant leave to take a subsequent deposition, and the
30 parties, with the consent of any deponent who is not a party, may
31 stipulate that a subsequent deposition be taken. This subdivision
32 does not preclude taking one subsequent deposition of a natural
33 person who has previously been examined (1) as a result of that
34 person's designation to testify on behalf of an organization under
35 subdivision (d), or (2), pursuant to a court order under Section
36 485.230, for the limited purpose of discovering pursuant to
37 Section 485.230 the identity, location, and value of property in
38 which the deponent has an interest. This subdivision does not
39 authorize the taking of more than one subsequent deposition for
40 the limited purpose of Section 485.230.



1 (u) At the trial or any other hearing in the action, any part or all
2 of a deposition may be used against any party who was present or
3 represented at the taking of the deposition, or who had due notice
4 of the deposition and did not serve a valid objection under
5 subdivision (g), so far as admissible under the rules of evidence
6 applied as though the deponent were then present and testifying as
7 a witness, in accordance with the following provisions:

8 (1) Any party may use a deposition for the purpose of
9 contradicting or impeaching the testimony of the deponent as a
10 witness, or for any other purpose permitted by the Evidence Code.

11 (2) An adverse party may use for any purpose, a deposition of
12 a party to the action, or of anyone who at the time of taking the
13 deposition was an officer, director, managing agent, employee,
14 agent, or designee under subdivision (d) of a party. It is not ground
15 for objection to the use of a deposition of a party under this
16 paragraph by an adverse party that the deponent is available to
17 testify, has testified, or will testify at the trial or other hearing.

18 (3) Any party may use for any purpose the deposition of any
19 person or organization, including that of any party to the action,
20 if the court finds any of the following:

21 (A) The deponent resides more than 150 miles from the place
22 of the trial or other hearing.

23 (B) The deponent, without the procurement or wrongdoing of
24 the proponent of the deposition for the purpose of preventing
25 testimony in open court, is (i) exempted or precluded on the
26 ground of privilege from testifying concerning the matter to which
27 the deponent's testimony is relevant, (ii) disqualified from
28 testifying, (iii) dead or unable to attend or testify because of
29 existing physical or mental illness or infirmity, (iv) absent from the
30 trial or other hearing and the court is unable to compel the
31 deponent's attendance by its process, or (v) absent from the trial
32 or other hearing and the proponent of the deposition has exercised
33 reasonable diligence but has been unable to procure the deponent's
34 attendance by the court's process.

35 (C) Exceptional circumstances exist that make it desirable to
36 allow the use of any deposition in the interests of justice and with
37 due regard to the importance of presenting the testimony of
38 witnesses orally in open court.

39 (4) Any party may use a video recording of the deposition
40 testimony of a treating or consulting physician or of any expert



1 witness even though the deponent is available to testify if the
2 deposition notice under subdivision (d) reserved the right to use
3 the deposition at trial, and if that party has complied with
4 subparagraph (I) of paragraph (2) of subdivision (I).

5 (5) Subject to the requirements of this section, a party may offer
6 in evidence all or any part of a deposition, and if the party
7 introduces only part of the deposition, any other party may
8 introduce any other parts that are relevant to the parts introduced.

9 (6) Substitution of parties does not affect the right to use
10 depositions previously taken.

11 (7) When an action has been brought in any court of the United
12 States or of any state, and another action involving the same
13 subject matter is subsequently brought between the same parties
14 or their representatives or successors in interest, all depositions
15 lawfully taken and duly filed in the initial action may be used in
16 the subsequent action as if originally taken in that subsequent
17 action. A deposition previously taken may also be used as
18 permitted by the Evidence Code.

19 (v) Violation of subdivision (k) by any person may result in a
20 civil penalty of up to five thousand dollars (\$5,000) imposed by a
21 court of competent jurisdiction.

22 SEC. 3. Section 2025.5 of the Code of Civil Procedure is
23 amended to read:

24 2025.5. (a) Notwithstanding paragraph (2) of subdivision (k)
25 of Section 2025, unless the court issues an order to the contrary,
26 a copy of the transcript of the deposition testimony made by, or at
27 the ~~discretion~~ *direction* of, any party, or an audio or video
28 recording of the deposition testimony, if still in the possession of
29 the deposition officer, shall be made available by the deposition
30 officer to any person requesting a copy upon payment of a
31 reasonable charge set by the deposition officer.

32 (b) If a copy is requested from the deposition officer, the
33 deposition officer shall mail a notice to all parties attending the
34 deposition and to the deponent at his or her last known address
35 advising them that (1) the copy is being sought, (2) the name of the
36 person requesting the copy, and (3) the right to seek a protective
37 order pursuant to subdivision (i) of Section 2025. If a protective
38 order is not served on the deposition officer within 30 days of the
39 mailing of the notice, the deposition officer shall make the copy
40 available to the person requesting the copy.



1 (c) This section shall apply only to recorded testimony taken at
2 depositions occurring on or after January 1, 1998.

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