

ASSEMBLY BILL

No. 3081

Introduced by Committee on Judiciary (Corbett (Chair), Harman (Vice Chair), Bates, Hancock, Jackson, Laird, Lieber, Longville, Montanez, Pacheco, and Steinberg)

March 11, 2004

An act to amend Sections 6202, 17083, and 17550.47 of the Business and Professions Code, to amend Section 47 of the Civil Code, to amend Sections 93, 94, 116.310, 116.770, 437c, 485.230, 708.020, 708.030, 1005, 1141.16, 1141.24, 1283.05, 1775.11, 1985.3, 1985.6, 1987.5, 1991.1, and 2093 of, to add Title 4 (commencing with Section 2016.010) to Part 4 of, and to repeal Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of, the Code of Civil Procedure, to amend Sections 45312, 87675, 87679, and 88131 of the Education Code, to amend Sections 915, 1156, 1156.1, and 1560 of the Evidence Code, to amend Sections 3110.5, 3666, and 4331 of the Family Code, to amend Sections 309 and 5934 of the Fish and Game Code, to amend Sections 6276.04, 11045, 11187, 11189, 11511, 12972, 18671, 68092.5, and 68616 of the Government Code, to amend Sections 5710 and 6613 of the Labor Code, to amend Sections 186.11, 1054.6, and 1524 of the Penal Code, to amend Sections 451 and 452 of the Probate Code, to amend Section 20104.4 of the Public Contract Code, to amend Sections 3357 and 3769 of the Public Resources Code, to amend Section 1794 of the Public Utilities Code, to amend Section 25110 of the Revenue and Taxation Code, to amend Section 3050.1 of the Vehicle Code, and to amend Section 1100 of the Water Code, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 3081, as introduced, Committee on Judiciary. Civil discovery.

Existing law sets forth numerous provisions governing discovery in civil actions and proceedings, as specified.

This bill would, operative July 1, 2005, revise and recast those provisions enacting the Civil Discovery Act providing for the scope of discovery, the use of technology in conducting discovery in a complex case, the attorney work product, the methods and sequence of discovery, nonparty discovery, sanctions, the time for completion of discovery, the oral deposition inside California, the oral deposition outside California, depositions by written questions, depositions in actions pending outside California, written interrogatories, inspection and production of documents, tangible things, land and other property, physical or mental examination, requests for admission, form interrogatories and requests for admission, simultaneous exchange of expert witness information, the perpetuation of testimony or preservation of evidence before filing an action, and the perpetuation of testimony or preservation of information pending appeal.

This bill would make various conforming changes. The bill would also declare that nothing therein is intended to substantively change the law of civil discovery.

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 6202 of the Business and Professions
2 Code is amended to read:
3 6202. The provisions of Article 3 (commencing with Section
4 950) of Chapter 4 of Division 8 of the Evidence Code shall not
5 prohibit the disclosure of any relevant communication, nor shall
6 the provisions of ~~Section 2018~~ *Chapter 4 (commencing with*
7 *Section 2018.010) of Title 4 of Part 4* of the Code of Civil
8 Procedure be construed to prohibit the disclosure of any relevant
9 work product of the attorney in connection with: (a) an arbitration
10 hearing or mediation pursuant to this article; (b) a trial after
11 arbitration; or (c) judicial confirmation, correction, or vacation of
12 an arbitration award. In no event shall such disclosure be deemed
13 a waiver of the confidential character of such matters for any other
14 purpose.

SEC. 2. Section 17083 of the Business and Professions Code is amended to read:

17083. The testimony of any witness in any action brought under this chapter may be taken by deposition ~~even though the case is not one specified in Section 2021 of the Code of Civil Procedure, but otherwise the provisions of Part 4, Title 3, Chapter 3 of. The provisions of Chapter 3 (commencing with Section 2002) of Title 3 of Part 4 of, and the provisions of Title 4 (commencing with Section 2016.010) of Part 4 of,~~ the Code of Civil Procedure are applicable to the witness, ~~his~~ *the* testimony and *the* deposition.

In addition, the books and records of any party, or of any such witness, may be ~~subpenaed~~ *subpoenaed* into court and introduced into evidence, or introduced, by reference, into evidence, and may be required to be produced at the taking of the deposition of any party or of any such witness and there inquired into.

SEC. 3. Section 17550.47 of the Business and Professions Code is amended to read:

17550.47. (a) (1) Any person aggrieved who suffers a loss of more than fifty dollars (\$50) of amounts paid for air or sea transportation or travel services may file a claim with the Travel Consumer Restitution Corporation by filing a claim form as required by Section 17550.46 and paying, by check or money order, a processing fee to the Travel Consumer Restitution Corporation in the amount of thirty-five dollars (\$35). Any check for the processing fee that is returned unpaid to the corporation by the financial institution upon which it is drawn shall be returned to the claimant and the claim shall be rejected for filing. Any claimant whose claim is rejected may resubmit his or her claim upon payment of a processing fee of fifty dollars (\$50).

(2) Any processing fee required by paragraph (1) shall be nonrefundable except where (A) a claim is denied on the basis as set forth in the statement of decision that either the seller of travel, at the time of sale, was not a participant in the Travel Consumer Restitution Fund or the seller of travel was not registered, or (B) the claim is granted in whole or in part. In either case, the processing fee shall be refunded to the person aggrieved upon denial or upon payment of the claim, whichever is applicable.

(3) In no event shall a person aggrieved have more than one year after the scheduled date of completion of travel within which to file a claim with the Travel Consumer Restitution Fund.

1 (b) A person aggrieved may recover from the Travel Consumer
2 Restitution Fund an amount not to exceed fifteen thousand dollars
3 (\$15,000) per person aggrieved, not to exceed the amount paid to
4 the participant by or on behalf of the person aggrieved for the
5 transportation or travel services. Payments from the restitution
6 fund shall be limited to restitution for sums paid for transportation
7 or travel services and shall not include any other amounts,
8 including, but not limited to, payment for lost wages, pain and
9 suffering, emotional distress, travel insurance, lost luggage, or any
10 consequential damages. The person aggrieved shall not be entitled
11 to receive attorney's fees in connection with a filed claim or on
12 appeal.

13 (c) All claims are to be decided on the written record before the
14 corporation, with no hearing to be held. The record shall consist
15 of a fully executed and complete claim form, any other
16 documentation submitted by the claimant or the participant, and
17 any documents or reports submitted by staff or the designated
18 representative of the office of the Attorney General. Claims are to
19 be decided within 45 days of receipt unless (1) the designated
20 representative of the office of the Attorney General requests a
21 continuance to obtain and submit information, or (2) the Travel
22 Consumer Restitution Corporation determines that additional
23 information or documentation is required to decide the claim. In
24 either case, the claim shall be decided within 45 days of receipt of
25 all additional information or documentation. A claim not decided
26 timely shall be deemed granted.

27 (d) Whenever the Travel Consumer Restitution Corporation
28 denies a claim in whole or in part, it shall provide to the claimant
29 a written statement of decision setting forth the factual and legal
30 basis for the denial.

31 (e) A claimant may request reconsideration of an adverse
32 decision of the Travel Consumer Restitution Corporation by
33 mailing a written request, accompanied by a processing fee of fifty
34 dollars (\$50) paid by check or money order, within 20 days of the
35 date a notice of denial and statement of decision was mailed to the
36 claimant. Any check for the processing fee that is returned unpaid
37 to the Travel Consumer Restitution Corporation by the financial
38 institution upon which it is drawn shall be returned to the claimant
39 and the request for reconsideration shall not be determined until
40 the claimant has paid the fifty dollar (\$50) processing fee.

1 (f) The Travel Consumer Restitution Corporation shall, within
2 60 days of receipt of the request, either decide the request or advise
3 the claimant that additional information or documentation is
4 needed, and, if the decision is a denial in whole or in part, it shall
5 provide to the claimant and seller of travel a written statement of
6 decision setting forth the factual and legal basis for the decision.
7 No appeal may be taken pursuant to subdivision (g) until
8 reconsideration has been requested and decided. The claimant
9 shall not be entitled to any attorney's fees incurred in connection
10 with presentation of a claim or request for reconsideration.

11 (g) No decision of the Travel Consumer Restitution
12 Corporation granting or denying a claim in whole or part shall be
13 subject to review or appeal except as provided in this section. A
14 claimant may seek review of the denial, in whole or part, of a claim
15 by filing a notice of appeal after having served the notice by mail
16 on the Travel Consumer Restitution Corporation. The notice of
17 appeal shall be filed and served on the Travel Consumer
18 Restitution Corporation not later than 30 days after a written
19 statement of decision on a request for reconsideration has been
20 mailed to the claimant. The notice of appeal from a decision of the
21 Travel Consumer Restitution Corporation shall be filed with the
22 clerk of the superior court either in the county in which the
23 principal place of business of the Travel Consumer Restitution
24 Corporation is located, or in the county in which the claimant was
25 a resident at the time the claimant purchased the transportation or
26 travel services in dispute.

27 (h) The claimant shall pay the same filing fee as is required for
28 appeals from small claims court. The Travel Consumer Restitution
29 Corporation shall file its response and the record of the claim
30 before the corporation with the clerk of the superior court within
31 30 days of the day the notice of appeal was served on the Travel
32 Consumer Restitution Corporation.

33 (i) Upon the filing of the record the clerk of the court shall
34 schedule a hearing for the earliest available time and shall mail
35 written notice of the hearing at least 14 days prior to the time set
36 for the hearing.

37 (j) The hearing on appeal shall be limited to the record before
38 the Travel Consumer Restitution Corporation and any relevant
39 evidence that could not have been with reasonable diligence
40 submitted previously to the corporation. The reviewing court shall

1 affirm the decision if it is supported by substantial evidence in light
2 of the entire record. The pretrial discovery procedures described
3 in ~~subdivision (a) of Section 2019~~ 2019.010 of the Code of Civil
4 Procedure are not permitted, there is no right to trial by jury, and
5 the decision of the superior court shall be appealable by either
6 party. No money may be claimed from or paid by the Travel
7 Consumer Restitution Fund except in accordance with the
8 provisions and procedures set forth in this article. No provision
9 herein shall limit or otherwise affect those remedies as may be
10 available against persons or entities other than the Travel
11 Consumer Restitution Corporation.

12 (k) If the claimant prevails in whole or in part on an appeal, the
13 claimant shall not be entitled to an award in excess of the amount
14 of the original claim.

15 (l) Any claim awarded by the corporation shall be paid
16 promptly by the trustee of the restitution fund when the time for
17 appeal has passed. Any judgment on appeal shall be paid promptly
18 by the trustee of the restitution fund whenever the judgment
19 becomes final. If there should be insufficient funds to pay a claim
20 when otherwise due, claims shall be paid in the order received. If
21 the Travel Consumer Restitution Corporation ceases to operate
22 pursuant to the terms of Section 17550.52, any remaining trust
23 funds shall be allocated on a pro rata basis to claims accruing prior
24 to the corporation ceasing to operate, after payment of outstanding
25 debts and liabilities as provided in Section 17550.57.

26 (m) A claim shall require a majority of at least three affirmative
27 votes for denial, otherwise it shall be deemed granted.

28 (n) (1) A director shall not participate in the decision of a claim
29 if the director has a financial interest in the outcome of the
30 decision, has a financial interest in or is employed by the seller of
31 travel that is the subject of the claim, or has any familial
32 relationship or close personal friendship with either the claimant
33 or any owner, officer, director, or manager of the seller of travel
34 that is the subject of the claim.

35 (2) The director shall disclose to the other directors before a
36 claim is considered all matters that disqualify the director from
37 participating in the decision of the claim as described in paragraph
38 (1).

39 SEC. 4. Section 47 of the Civil Code is amended to read:

40 47. A privileged publication or broadcast is one made:

1 (a) In the proper discharge of an official duty.

2 (b) In any (1) legislative proceeding, (2) judicial proceeding,
3 (3) in any other official proceeding authorized by law, or (4) in the
4 initiation or course of any other proceeding authorized by law and
5 reviewable pursuant to Chapter 2 (commencing with Section
6 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except
7 as follows:

8 (1) An allegation or averment contained in any pleading or
9 affidavit filed in an action for marital dissolution or legal
10 separation made of or concerning a person by or against whom no
11 affirmative relief is prayed in the action shall not be a privileged
12 publication or broadcast as to the person making the allegation or
13 averment within the meaning of this section unless the pleading is
14 verified or affidavit sworn to, and is made without malice, by one
15 having reasonable and probable cause for believing the truth of the
16 allegation or averment and unless the allegation or averment is
17 material and relevant to the issues in the action.

18 (2) This subdivision does not make privileged any
19 communication made in furtherance of an act of intentional
20 destruction or alteration of physical evidence undertaken for the
21 purpose of depriving a party to litigation of the use of that
22 evidence, whether or not the content of the communication is the
23 subject of a subsequent publication or broadcast which is
24 privileged pursuant to this section. As used in this paragraph,
25 “physical evidence” means evidence specified in Section 250 of
26 the Evidence Code or evidence that is property of any type
27 specified in ~~Section 2031~~ *Chapter 14 (commencing with Section*
28 *2031.010) of Title 4 of Part 4 of the Code of Civil Procedure.*

29 (3) This subdivision does not make privileged any
30 communication made in a judicial proceeding knowingly
31 concealing the existence of an insurance policy or policies.

32 (4) A recorded lis pendens is not a privileged publication unless
33 it identifies an action previously filed with a court of competent
34 jurisdiction which affects the title or right of possession of real
35 property, as authorized or required by law.

36 (c) In a communication, without malice, to a person interested
37 therein, (1) by one who is also interested, or (2) by one who stands
38 in such a relation to the person interested as to afford a reasonable
39 ground for supposing the motive for the communication to be
40 innocent, or (3) who is requested by the person interested to give

1 the information. This subdivision applies to and includes a
2 communication concerning the job performance or qualifications
3 of an applicant for employment, based upon credible evidence,
4 made without malice, by a current or former employer of the
5 applicant to, and upon request of, one whom the employer
6 reasonably believes is a prospective employer of the applicant.
7 This subdivision authorizes a current or former employer, or the
8 employer's agent, to answer whether or not the employer would
9 rehire a current or former employee. This subdivision shall not
10 apply to a communication concerning the speech or activities of an
11 applicant for employment if the speech or activities are
12 constitutionally protected, or otherwise protected by Section
13 527.3 of the Code of Civil Procedure or any other provision of law.

14 (d) (1) By a fair and true report in, or a communication to, a
15 public journal, of (A) a judicial, (B) legislative, or (C) other public
16 official proceeding, or (D) of anything said in the course thereof,
17 or (E) of a verified charge or complaint made by any person to a
18 public official, upon which complaint a warrant has been issued.

19 (2) Nothing in paragraph (1) shall make privileged any
20 communication to a public journal that does any of the following:

21 (A) Violates Rule 5-120 of the State Bar Rules of Professional
22 Conduct.

23 (B) Breaches a court order.

24 (C) Violates any requirement of confidentiality imposed by
25 law.

26 (e) By a fair and true report of (1) the proceedings of a public
27 meeting, if the meeting was lawfully convened for a lawful
28 purpose and open to the public, or (2) the publication of the matter
29 complained of was for the public benefit.

30 SEC. 5. Section 93 of the Code of Civil Procedure is amended
31 to read:

32 93. (a) The ~~plaintiff~~ *plaintiff* has the option to serve case
33 questionnaires with the complaint, using forms approved by the
34 Judicial Council. The questionnaires served shall include a
35 completed copy of the plaintiff's completed case questionnaire,
36 and a blank copy of the defendant's case questionnaire.

37 (b) Any defendant upon whom a case questionnaire is served
38 shall serve a completed defendant's case questionnaire upon the
39 requesting plaintiff with the answer.



(c) The case questionnaire shall be designed to elicit fundamental information about each party's case, including names and addresses of all witnesses with knowledge of any relevant facts, a list of all documents relevant to the case, a statement of the nature and amount of damages, and information covering insurance coverages, injuries and treating physicians. The Judicial Council shall design and develop forms for case questionnaires.

(d) Approved forms shall be made available by the clerk of the court.

(e) If a party on whom a case questionnaire has been served under subdivision (a) or (b) fails to serve a timely or a complete response to that questionnaire, the party serving the questionnaire may move for an order compelling a response or a further response and for a monetary sanction under ~~Section 2023 Chapter 7~~ *(commencing with Section 2023.010) of Title 4 of Part 4*. If a party then fails to obey an order compelling a response or a further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under ~~Section 2023 Chapter 7~~ *(commencing with Section 2023.010) of Title 4 of Part 4*. In lieu of or in addition to that sanction, the court may impose a monetary sanction under ~~Section 2023 Chapter 7~~ *(commencing with Section 2023.010) of Title 4 of Part 4*.

SEC. 6. Section 94 of the Code of Civil Procedure is amended to read:

94. Discovery is permitted only to the extent provided by this section and Section 95. This discovery shall comply with the notice and format requirements of the particular method of discovery, as provided in ~~Article 3~~ *(commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010) of Part 4*. As to each adverse party, a party may use the following forms of discovery:

(a) Any combination of the following:

(1) Interrogatories (with no subparts) under ~~Section 2030 Chapter 13~~ *(commencing with Section 2030.010) of Title 4 of Part 4*.

(2) Demands to produce documents or things under ~~Section 2031 Chapter 14~~ *(commencing with Section 2031.010) of Title 4 of Part 4*.

(3) Requests for admission (with no subparts) under ~~Section 2033~~ Chapter 16 (commencing with Section 2033.010) of Title 4 of Part 4.

(b) One oral or written deposition under ~~Sections 2025 to 2028, inclusive—~~Chapter 9 (commencing with Section 2025.010), Chapter 10 (commencing with Section 2026.010), and Chapter 11 (commencing with Section 2028.010) of Title 4 of Part 4.

(c) Any party may serve on any person a deposition subpoena duces tecum requiring the person served to mail copies of documents, books or records to the party's counsel at a specified address, along with an affidavit complying with Section 1561 of the Evidence Code.

The party who issued the deposition subpoena shall mail a copy of the response to any other party who tenders the reasonable cost of copying it.

(d) Physical and mental examinations under ~~Section 2032~~ Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4.

(e) The identity of expert witnesses under ~~Section 2034~~ Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4.

SEC. 7. Section 116.310 of the Code of Civil Procedure is amended to read:

116.310. (a) No formal pleading, other than the claim described in Section 116.320 or 116.360, is necessary to initiate a small claims action.

(b) The pretrial discovery procedures described in ~~subdivision (a) of Section 2019~~ Section 2019.010 are not permitted in small claims actions.

SEC. 8. Section 116.770 of the Code of Civil Procedure is amended to read:

116.770. (a) The appeal to the superior court shall consist of a new hearing before a judicial officer other than the judicial officer who heard the action in the small claims division.

(b) The hearing on an appeal to the superior court shall be conducted informally. The pretrial discovery procedures described in ~~subdivision (a) of Section 2019~~ Section 2019.010 are not permitted, no party has a right to a trial by jury, and no tentative decision or statement of decision is required.

(c) Article 5 (commencing with Section 116.510) on hearings in the small claims court applies in hearings on appeal in the superior court, except that attorneys may participate.

(d) The scope of the hearing shall include the claims of all parties who were parties to the small claims action at the time the notice of appeal was filed. The hearing shall include the claim of a defendant that was heard in the small claims court.

(e) The clerk of the superior court shall schedule the hearing for the earliest available time and shall mail written notice of the hearing to the parties at least 14 days prior to the time set for the hearing.

(f) The Judicial Council may prescribe by rule the practice and procedure on appeal and the time and manner in which the record on appeal shall be prepared and filed.

SEC. 9. Section 437c of the Code of Civil Procedure is amended to read:

437c. (a) Any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct. Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. However, if the notice is served by mail, the required 75-day period of notice shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States, and if the notice is served by facsimile transmission, Express Mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days. The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b) (1) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions,

1 and matters of which judicial notice shall or may be taken. The
2 supporting papers shall include a separate statement setting forth
3 plainly and concisely all material facts which the moving party
4 contends are undisputed. Each of the material facts stated shall be
5 followed by a reference to the supporting evidence. The failure to
6 comply with this requirement of a separate statement may in the
7 court's discretion constitute a sufficient ground for denial of the
8 motion.

9 (2) Any opposition to the motion shall be served and filed not
10 less than 14 days preceding the noticed or continued date of
11 hearing, unless the court for good cause orders otherwise. The
12 opposition, where appropriate, shall consist of affidavits,
13 declarations, admissions, answers to interrogatories, depositions,
14 and matters of which judicial notice shall or may be taken.

15 (3) The opposition papers shall include a separate statement
16 that responds to each of the material facts contended by the moving
17 party to be undisputed, indicating whether the opposing party
18 agrees or disagrees that those facts are undisputed. The statement
19 also shall set forth plainly and concisely any other material facts
20 that the opposing party contends are disputed. Each material fact
21 contended by the opposing party to be disputed shall be followed
22 by a reference to the supporting evidence. Failure to comply with
23 this requirement of a separate statement may constitute a sufficient
24 ground, in the court's discretion, for granting the motion.

25 (4) Any reply to the opposition shall be served and filed by the
26 moving party not less than five days preceding the noticed or
27 continued date of hearing, unless the court for good cause orders
28 otherwise.

29 (5) Evidentiary objections not made at the hearing shall be
30 deemed waived.

31 (6) Except for subdivision (c) of Section 1005 relating to the
32 method of service of opposition and reply papers, Sections 1005
33 and 1013, extending the time within which a right may be
34 exercised or an act may be done, do not apply to this section.

35 (7) Any incorporation by reference of matter in the court's file
36 shall set forth with specificity the exact matter to which reference
37 is being made and shall not incorporate the entire file.

38 (c) The motion for summary judgment shall be granted if all the
39 papers submitted show that there is no triable issue as to any
40 material fact and that the moving party is entitled to a judgment as

1 a matter of law. In determining whether the papers show that there
2 is no triable issue as to any material fact the court shall consider
3 all of the evidence set forth in the papers, except that to which
4 objections have been made and sustained by the court, and all
5 inferences reasonably deducible from the evidence, except
6 summary judgment may not be granted by the court based on
7 inferences reasonably deducible from the evidence, if contradicted
8 by other inferences or evidence, which raise a triable issue as to any
9 material fact.

10 (d) Supporting and opposing affidavits or declarations shall be
11 made by any person on personal knowledge, shall set forth
12 admissible evidence, and shall show affirmatively that the affiant
13 is competent to testify to the matters stated in the affidavits or
14 declarations. Any objections based on the failure to comply with
15 the requirements of this subdivision shall be made at the hearing
16 or shall be deemed waived.

17 (e) If a party is otherwise entitled to a summary judgment
18 pursuant to this section, summary judgment may not be denied on
19 grounds of credibility or for want of cross-examination of
20 witnesses furnishing affidavits or declarations in support of the
21 summary judgment, except that summary judgment may be denied
22 in the discretion of the court, where the only proof of a material fact
23 offered in support of the summary judgment is an affidavit or
24 declaration made by an individual who was the sole witness to that
25 fact; or where a material fact is an individual's state of mind, or
26 lack thereof, and that fact is sought to be established solely by the
27 individual's affirmation thereof.

28 (f) (1) A party may move for summary adjudication as to one
29 or more causes of action within an action, one or more affirmative
30 defenses, one or more claims for damages, or one or more issues
31 of duty, if that party contends that the cause of action has no merit
32 or that there is no affirmative defense thereto, or that there is no
33 merit to an affirmative defense as to any cause of action, or both,
34 or that there is no merit to a claim for damages, as specified in
35 Section 3294 of the Civil Code, or that one or more defendants
36 either owed or did not owe a duty to the plaintiff or plaintiffs. A
37 motion for summary adjudication shall be granted only if it
38 completely disposes of a cause of action, an affirmative defense,
39 a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. However, a party may not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court, unless that party establishes to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment, on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion as to which the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of and in opposition to the motion which indicates that a triable controversy exists. Upon the grant of a motion for summary judgment, on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of, and if applicable in opposition to, the motion which indicates that no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(i) If, after granting a continuance to allow specified additional discovery, the court determines that the party seeking summary judgment has unreasonably failed to allow the discovery to be conducted, the court shall grant a continuance to permit the discovery to go forward or deny the motion for summary judgment or summary adjudication. This section does not affect or limit the ability of any party to compel discovery under the Civil Discovery

1 Act (~~Article 3 (commencing with Section 2016) of Chapter 3 of~~
2 ~~Title 3 of Part 4~~) (*Title 4 (commencing with Section 2016.010) of*
3 *Part 4*).

4 (j) If the court determines at any time that any of the affidavits
5 are presented in bad faith or solely for purposes of delay, the court
6 shall order the party presenting the affidavits to pay the other party
7 the amount of the reasonable expenses which the filing of the
8 affidavits caused the other party to incur. Sanctions may not be
9 imposed pursuant to this subdivision, except on notice contained
10 in a party's papers, or on the court's own noticed motion, and after
11 an opportunity to be heard.

12 (k) Except when a separate judgment may properly be awarded
13 in the action, no final judgment may be entered on a motion for
14 summary judgment prior to the termination of the action, but the
15 final judgment shall, in addition to any matters determined in the
16 action, award judgment as established by the summary proceeding
17 herein provided for.

18 (l) In actions which arise out of an injury to the person or to
19 property, if a motion for summary judgment was granted on the
20 basis that the defendant was without fault, no other defendant
21 during trial, over plaintiff's objection, may attempt to attribute
22 fault to or comment on the absence or involvement of the
23 defendant who was granted the motion.

24 (m) (1) A summary judgment entered under this section is an
25 appealable judgment as in other cases. Upon entry of any order
26 pursuant to this section, except the entry of summary judgment, a
27 party may, within 20 days after service upon him or her of a written
28 notice of entry of the order, petition an appropriate reviewing court
29 for a peremptory writ. If the notice is served by mail, the initial
30 period within which to file the petition shall be increased by five
31 days if the place of address is within the State of California, 10 days
32 if the place of address is outside the State of California but within
33 the United States, and 20 days if the place of address is outside the
34 United States. If the notice is served by facsimile transmission,
35 Express Mail, or another method of delivery providing for
36 overnight delivery, the initial period within which to file the
37 petition shall be increased by two court days. The superior court
38 may, for good cause, and prior to the expiration of the initial
39 period, extend the time for one additional period not to exceed 10
40 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The supplemental briefing may include an argument that additional evidence relating to that ground exists, but that the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefing to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefing, a rehearing shall be ordered upon timely petition of any party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion which has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not operate to bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, nor a witness, nor the court shall comment upon the grant or denial of a motion for summary adjudication to a jury.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party

has proved each element of the cause of action entitling the party to judgment on that cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The defendant or cross-defendant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if that party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff or cross-complainant may not rely upon the mere allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto.

(q) This section does not extend the period for trial provided by Section 1170.5.

(r) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(s) For the purposes of this section, a change in law does not include a later enacted statute without retroactive application.

SEC. 10. Section 485.230 of the Code of Civil Procedure is amended to read:

485.230. Where a right to attach order has been issued by the court, a plaintiff may discover, through any means provided for by, and subject to the protections included in, ~~Article 3 (commencing with Section 2016) of Title 3~~ *Title 4 (commencing with Section 2016.010)* of Part 4, the identity, location, and value of property in which the defendant has an interest.

SEC. 11. Section 708.020 of the Code of Civil Procedure is amended to read:

1 708.020. (a) The judgment creditor may propound written
2 interrogatories to the judgment debtor, in the manner provided in
3 ~~Section 2030 Chapter 13 (commencing with Section 2030.010) of~~
4 ~~Title 4 of Part 4~~, requesting information to aid in enforcement of
5 the money judgment. The judgment debtor shall answer the
6 interrogatories in the manner and within the time provided by
7 ~~Section 2030 Chapter 13 (commencing with Section 2030.010) of~~
8 ~~Title 4 of Part 4~~.

9 (b) The judgment creditor may not serve interrogatories
10 pursuant to this section within 120 days after the judgment debtor
11 has responded to interrogatories previously served pursuant to this
12 section or within 120 days after the judgment debtor has been
13 examined pursuant to Article 2 (commencing with Section
14 708.110), and the judgment debtor is not required to respond to any
15 interrogatories so served.

16 (c) Interrogatories served pursuant to this section may be
17 enforced, to the extent practicable, in the same manner as
18 interrogatories in a civil action.

19 (d) The limitation provided by ~~Section 2030 Chapter 13~~
20 ~~(commencing with Section 2030.010) of Title 4 of Part 4~~ on the
21 number of interrogatories that may be propounded applies to each
22 set of interrogatories propounded from time to time pursuant to
23 this section, but does not apply cumulatively to interrogatories
24 propounded by the judgment creditor to the judgment debtor.

25 SEC. 12. Section 708.030 of the Code of Civil Procedure is
26 amended to read:

27 708.030. (a) The judgment creditor may demand that any
28 judgment debtor produce and permit the party making the demand,
29 or someone acting on that party's behalf, to inspect and to copy a
30 document that is in the possession, custody, or control of the party
31 on whom the demand is made in the manner provided in ~~Section~~
32 ~~2031 Chapter 14 (commencing with Section 2031.010) of Title 4~~
33 ~~of Part 4~~, if the demand requests information to aid in enforcement
34 of the money judgment. The judgment debtor shall respond and
35 comply with the demand in the manner and within the time
36 provided by ~~Section 2031 Chapter 14 (commencing with Section~~
37 ~~2031.010) of Title 4 of Part 4~~.

38 (b) The judgment creditor may not serve interrogatories or
39 inspection demands pursuant to this section or Section 708.020
40 within 120 days after the judgment debtor has responded to the

1 interrogatories or demands previously served pursuant to this
2 section or Section 708.020, or within 120 days after the judgment
3 debtor has been examined pursuant to Article 2 (commencing with
4 Section 708.110), and the judgment debtor is not required to
5 respond to any discovery so served.

6 (c) Inspection demands served pursuant to this section may be
7 enforced to the extent practicable, in the same manner as
8 inspection demands in a civil action.

9 SEC. 13. Section 1005 of the Code of Civil Procedure is
10 amended to read:

11 1005. (a) Written notice shall be given, as prescribed in
12 subdivisions (b) and (c), for the following motions:

13 (1) Notice of Application and Hearing for Writ of Attachment
14 under Section 484.040.

15 (2) Notice of Application and Hearing for Claim and Delivery
16 under Section 512.030.

17 (3) Notice of Hearing for Claim of Exemption under Section
18 706.105.

19 (4) Motion to Quash Summons pursuant to subdivision (b) of
20 Section 418.10.

21 (5) Motion for Determination of Good Faith Settlement
22 pursuant to Section 877.6.

23 (6) Hearing for Discovery of Peace Officer Personnel Records
24 pursuant to Section 1043 of the Evidence Code.

25 (7) Notice of Hearing of Third-Party Claim pursuant to Section
26 720.320.

27 (8) Motion for an Order to Attend Deposition more than 150
28 miles from deponent's residence pursuant to ~~paragraph (3) of~~
29 ~~subdivision (c) of Section 2025~~ *Section 2025.260*.

30 (9) Notice of Hearing of Application for Relief pursuant to
31 Section 946.6 of the Government Code.

32 (10) Motion to Set Aside Default or Default Judgment and for
33 Leave to Defend Actions pursuant to Section 473.5.

34 (11) Motion to Expunge Notice of Pendency of Action
35 pursuant to Section 405.30.

36 (12) Motion to Set Aside Default and for Leave to Amend
37 pursuant to Section 585.5.

38 (13) Any other proceeding under this code in which notice is
39 required and no other time or method is prescribed by law or by
40 court or judge.

1 (b) Unless otherwise ordered or specifically provided by law,
2 all moving and supporting papers shall be served and filed at least
3 21 calendar days before the hearing. The moving and supporting
4 papers served shall be a copy of the papers filed or to be filed with
5 the court. However, if the notice is served by mail, the required
6 21-day period of notice before the hearing shall be increased by
7 five calendar days if the place of mailing and the place of address
8 are within the State of California, 10 calendar days if either the
9 place of mailing or the place of address is outside the State of
10 California but within the United States, and 20 calendar days if
11 either the place of mailing or the place of address is outside the
12 United States, and if the notice is served by facsimile transmission,
13 express mail, or another method of delivery providing for
14 overnight delivery, the required 21-day period of notice before the
15 hearing shall be increased by two calendar days. Section 1013,
16 which extends the time within which a right may be exercised or
17 an act may be done, does not apply to a notice of motion, papers
18 opposing a motion, or reply papers governed by this section. All
19 papers opposing a motion so noticed shall be filed with the court
20 and a copy served on each party at least 10 calendar days, and all
21 reply papers at least five calendar days before the hearing.

22 The court, or a judge thereof, may prescribe a shorter time.

23 (c) Notwithstanding any other provision of this section, all
24 papers opposing a motion and all reply papers shall be served by
25 personal delivery, facsimile transmission, express mail, or other
26 means consistent with Sections 1010, 1011, 1012, and 1013, and
27 reasonably calculated to ensure delivery to the other party or
28 parties not later than the close of the next business day after the
29 time the opposing papers or reply papers, as applicable, are filed.
30 This subdivision applies to the service of opposition and reply
31 papers regarding motions for summary judgment or summary
32 adjudication, in addition to the motions listed in subdivision (a).

33 The court, or a judge thereof, may prescribe a shorter time.

34 SEC. 14. Section 1141.16 of the Code of Civil Procedure is
35 amended to read:

36 1141.16. (a) The determination of the amount in controversy,
37 under subdivision (a) or (b) of Section 1141.11, shall be made by
38 the court and the case referred to arbitration after all named parties
39 have appeared or defaulted. The determination shall be made at a
40 case management conference or based upon review of the written

submissions of the parties, as provided in rules adopted by the Judicial Council. The determination shall be based on the total amount of damages, and the judge may not consider questions of liability or comparative negligence or any other defense. At that time the court shall also make a determination whether any prayer for equitable relief is frivolous or insubstantial. The determination of the amount in controversy and whether any prayer for equitable relief is frivolous or insubstantial may not be appealable. No determination pursuant to this section shall be made if all parties stipulate in writing that the amount in controversy exceeds the amount specified in Section 1141.11.

(b) The determination and any stipulation of the amount in controversy shall be without prejudice to any finding on the value of the case by an arbitrator or in a subsequent trial de novo.

(c) Except as provided in this section, the arbitration hearing may not be held until 210 days after the filing of the complaint, or 240 days after the filing of a complaint if the parties have stipulated to a continuance pursuant to subdivision (d) of Section 68616 of the Government Code. A case shall be submitted to arbitration at an earlier time upon any of the following:

(1) The stipulation of the parties to an earlier arbitration hearing.

(2) The written request of all plaintiffs, subject to a motion by a defendant for good cause shown to delay the arbitration hearing.

(3) An order of the court if the parties have stipulated, or the court has ordered under Section 1141.24, that discovery other than that permitted under ~~Section 2034~~ *Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4* will be permitted after the arbitration award is rendered.

SEC. 15. Section 1141.24 of the Code of Civil Procedure is amended to read:

1141.24. In cases ordered to arbitration pursuant to Section 1141.11, no discovery other than that permitted by ~~Section 2034~~ *Chapter 18 (commencing with Section 2034.010) of Title 4 of Part 4* is permissible after an arbitration award except by stipulation of the parties or by leave of court upon a showing of good cause.

SEC. 16. Section 1283.05 of the Code of Civil Procedure is amended to read:

1 1283.05. To the extent provided in Section 1283.1 depositions
2 may be taken and discovery obtained in arbitration proceedings as
3 follows:

4 (a) After the appointment of the arbitrator or arbitrators, the
5 parties to the arbitration shall have the right to take depositions and
6 to obtain discovery regarding the subject matter of the arbitration,
7 and, to that end, to use and exercise all of the same rights, remedies,
8 and procedures, and be subject to all of the same duties, liabilities,
9 and obligations in the arbitration with respect to the subject matter
10 thereof, as provided in Chapter 2 (commencing with Section 1985)
11 of *Title 3 of Part 4*, and ~~Article 3 (commencing with Section 2016)~~
12 ~~of Chapter 3 of, Title 3 of Part 4 of this code~~ in *Title 4 (commencing*
13 *with Section 2016.010) of Part 4*, as if the subject matter of the
14 arbitration were pending before a superior court of this state in a
15 civil action other than a limited civil case, subject to the limitations
16 as to depositions set forth in subdivision (e) of this section.

17 (b) The arbitrator or arbitrators themselves shall have power,
18 in addition to the power of determining the merits of the
19 arbitration, to enforce the rights, remedies, procedures, duties,
20 liabilities, and obligations of discovery by the imposition of the
21 same terms, conditions, consequences, liabilities, sanctions, and
22 penalties as can be or may be imposed in like circumstances in a
23 civil action by a superior court of this state under the provisions of
24 this code, except the power to order the arrest or imprisonment of
25 a person.

26 (c) The arbitrator or arbitrators may consider, determine, and
27 make such orders imposing such terms, conditions, consequences,
28 liabilities, sanctions, and penalties, whenever necessary or
29 appropriate at any time or stage in the course of the arbitration, and
30 such orders shall be as conclusive, final, and enforceable as an
31 arbitration award on the merits, if the making of any such order
32 that is equivalent to an award or correction of an award is subject
33 to the same conditions, if any, as are applicable to the making of
34 an award or correction of an award.

35 (d) For the purpose of enforcing the duty to make discovery, to
36 produce evidence or information, including books and records,
37 and to produce persons to testify at a deposition or at a hearing, and
38 to impose terms, conditions, consequences, liabilities, sanctions,
39 and penalties upon a party for violation of any such duty, such

1 party shall be deemed to include every affiliate of such party as
2 defined in this section. For such purpose:

3 (1) The personnel of every such affiliate shall be deemed to be
4 the officers, directors, managing agents, agents, and employees of
5 such party to the same degree as each of them, respectively, bears
6 such status to such affiliate; and

7 (2) The files, books, and records of every such affiliate shall be
8 deemed to be in the possession and control of, and capable of
9 production by, such party. As used in this section, “affiliate” of the
10 party to the arbitration means and includes any party or person for
11 whose immediate benefit the action or proceeding is prosecuted or
12 defended, or an officer, director, superintendent, member, agent,
13 employee, or managing agent of such party or person.

14 (e) Depositions for discovery shall not be taken unless leave to
15 do so is first granted by the arbitrator or arbitrators.

16 SEC. 17. Section 1775.11 of the Code of Civil Procedure is
17 amended to read:

18 1775.11. Any party who participates in mediation pursuant to
19 Section 1775.3 shall retain the right to obtain discovery to the
20 extent available under the Civil Discovery Act of 1986, Article 3
21 (~~commencing with Section 2016~~) of Chapter 3 of Title 3, Title 4
22 (*commencing with Section 2016.010*) of Part 4.

23 SEC. 18. Section 1985.3 of the Code of Civil Procedure is
24 amended to read:

25 1985.3. (a) For purposes of this section, the following
26 definitions apply:

27 (1) “Personal records” means the original, any copy of books,
28 documents, other writings, or electronic data pertaining to a
29 consumer and which are maintained by any “witness” which is a
30 physician, dentist, ophthalmologist, optometrist, chiropractor,
31 physical therapist, acupuncturist, podiatrist, veterinarian,
32 veterinary hospital, veterinary clinic, pharmacist, pharmacy,
33 hospital, medical center, clinic, radiology or MRI center, clinical
34 or diagnostic laboratory, state or national bank, state or federal
35 association (as defined in Section 5102 of the Financial Code),
36 state or federal credit union, trust company, anyone authorized by
37 this state to make or arrange loans that are secured by real property,
38 security brokerage firm, insurance company, title insurance
39 company, underwritten title company, escrow agent licensed
40 pursuant to Division 6 (*commencing with Section 17000*) of the

1 Financial Code or exempt from licensure pursuant to Section
2 17006 of the Financial Code, attorney, accountant, institution of
3 the Farm Credit System, as specified in Section 2002 of Title 12
4 of the United States Code, or telephone corporation which is a
5 public utility, as defined in Section 216 of the Public Utilities
6 Code, or psychotherapist, as defined in Section 1010 of the
7 Evidence Code, or a private or public preschool, elementary
8 school, secondary school, or postsecondary school as described in
9 Section 76244 of the Education Code.

10 (2) “Consumer” means any individual, partnership of five or
11 fewer persons, association, or trust which has transacted business
12 with, or has used the services of, the witness or for whom the
13 witness has acted as agent or fiduciary.

14 (3) “Subpoenaing party” means the person or persons causing
15 a subpoena duces tecum to be issued or served in connection with
16 any civil action or proceeding pursuant to this code, but shall not
17 include the state or local agencies described in Section 7465 of the
18 Government Code, or any entity provided for under Article VI of
19 the California Constitution in any proceeding maintained before
20 an adjudicative body of that entity pursuant to Chapter 4
21 (commencing with Section 6000) of Division 3 of the Business and
22 Professions Code.

23 (4) “Deposition officer” means a person who meets the
24 qualifications specified in ~~paragraph (3) of subdivision (d) of~~
25 ~~Section 2020~~ Section 2020.420.

26 (b) Prior to the date called for in the subpoena duces tecum for
27 the production of personal records, the subpoenaing party shall
28 serve or cause to be served on the consumer whose records are
29 being sought a copy of the subpoena duces tecum, of the affidavit
30 supporting the issuance of the subpoena, if any, and of the notice
31 described in subdivision (e), and proof of service as indicated in
32 paragraph (1) of subdivision (c). This service shall be made as
33 follows:

34 (1) To the consumer personally, or at his or her last known
35 address, or in accordance with Chapter 5 (commencing with
36 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his
37 or her attorney of record. If the consumer is a minor, service shall
38 be made on the minor’s parent, guardian, conservator, or similar
39 fiduciary, or if one of them cannot be located with reasonable
40 diligence, then service shall be made on any person having the care

1 or control of the minor or with whom the minor resides or by whom
2 the minor is employed, and on the minor if the minor is at least 12
3 years of age.

4 (2) Not less than 10 days prior to the date for production
5 specified in the subpoena duces tecum, plus the additional time
6 provided by Section 1013 if service is by mail.

7 (3) At least five days prior to service upon the custodian of the
8 records, plus the additional time provided by Section 1013 if
9 service is by mail.

10 (c) Prior to the production of the records, the subpoenaing party
11 shall do either of the following:

12 (1) Serve or cause to be served upon the witness a proof of
13 personal service or of service by mail attesting to compliance with
14 subdivision (b).

15 (2) Furnish the witness a written authorization to release the
16 records signed by the consumer or by his or her attorney of record.
17 The witness may presume that any attorney purporting to sign the
18 authorization on behalf of the consumer acted with the consent of
19 the consumer, and that any objection to release of records is
20 waived.

21 (d) A subpoena duces tecum for the production of personal
22 records shall be served in sufficient time to allow the witness a
23 reasonable time, as provided in ~~paragraph (1) of subdivision (d) of~~
24 ~~Section 2020~~ *Section 2020.410*, to locate and produce the records
25 or copies thereof.

26 (e) Every copy of the subpoena duces tecum and affidavit, if
27 any, served on a consumer or his or her attorney in accordance with
28 subdivision (b) shall be accompanied by a notice, in a typeface
29 designed to call attention to the notice, indicating that (1) records
30 about the consumer are being sought from the witness named on
31 the subpoena; (2) if the consumer objects to the witness furnishing
32 the records to the party seeking the records, the consumer must file
33 papers with the court or serve a written objection as provided in
34 subdivision (g) prior to the date specified for production on the
35 subpoena; and (3) if the party who is seeking the records will not
36 agree in writing to cancel or limit the subpoena, an attorney should
37 be consulted about the consumer's interest in protecting his or her
38 rights of privacy. If a notice of taking of deposition is also served,
39 that other notice may be set forth in a single document with the
40 notice required by this subdivision.

(f) A subpoena duces tecum for personal records maintained by a telephone corporation which is a public utility, as defined in Section 216 of the Public Utilities Code, shall not be valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, as required by Section 2891 of the Public Utilities Code.

(g) Any consumer whose personal records are sought by a subpoena duces tecum and who is a party to the civil action in which this subpoena duces tecum is served may, prior to the date for production, bring a motion under Section 1987.1 to quash or modify the subpoena duces tecum. Notice of the bringing of that motion shall be given to the witness and deposition officer at least five days prior to production. The failure to provide notice to the deposition officer shall not invalidate the motion to quash or modify the subpoena duces tecum but may be raised by the deposition officer as an affirmative defense in any action for liability for improper release of records.

Any other consumer or nonparty whose personal records are sought by a subpoena duces tecum may, prior to the date of production, serve on the subpoenaing party the witness, and the deposition officer, a written objection that cites the specific grounds on which production of the personal records should be prohibited.

No witness or deposition officer shall be required to produce personal records after receipt of notice that the motion has been brought by consumer, or after receipt of a written objection from a nonparty consumer, except upon order of the court in which the action is pending or by agreement of the parties, witnesses, and consumers affected.

The party requesting a consumer's personal records may bring a motion under Section 1987.1 to enforce the subpoena within 20 days of service of the written objection. The motion shall be accompanied by a declaration showing a reasonable and good faith attempt at informal resolution of the dispute between the party requesting the personal records and the consumer or the consumer's attorney.

(h) Upon good cause shown and provided that the rights of witnesses and consumers are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a

subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(i) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular consumer or consumers and which requires a custodian of records to delete all information which would in any way identify any consumer whose records are to be produced.

(j) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(k) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the personal records sought by a subpoena duces tecum.

SEC. 19. Section 1985.6 of the Code of Civil Procedure is amended to read:

1985.6. (a) For purposes of this section, the following definitions apply:

(1) “Employment records” means the original or any copy of books, documents, other writings, or electronic data pertaining to the employment of any employee maintained by the current or former employer of the employee.

(2) “Employee” means any individual who is or has been employed by a witness subject to a subpoena duces tecum.

(3) “Subpoenaing party” means the person or persons causing a subpoena duces tecum to be issued or served in connection with any civil action or proceeding, but shall not include the state or local agencies described in Section 7465 of the Government Code, or any entity provided for under Article VI of the California Constitution in any proceeding maintained before an adjudicative body of that entity pursuant to Chapter 4 (commencing with Section 6000) of Division 3 of the Business and Professions Code.

(4) “Deposition officer” means a person who meets the qualifications specified in ~~paragraph (3) of subdivision (d) of Section 2020~~ Section 2020.420.

(b) Prior to the date called for in the subpoena duces tecum of the production of employment records, the subpoenaing party shall serve or cause to be served on the employee whose records are being sought a copy of: the subpoena duces tecum; the affidavit

1 supporting the issuance of the subpoena, if any; and the notice
2 described in subdivision (e), and proof of service as provided in
3 paragraph (1) of subdivision (c). This service shall be made as
4 follows:

5 (1) To the employee personally, or at his or her last known
6 address, or in accordance with Chapter 5 (commencing with
7 Section 1010) of Title 14 of Part 3, or, if he or she is a party, to his
8 or her attorney of record. If the employee is a minor, service shall
9 be made on the minor's parent, guardian, conservator, or similar
10 fiduciary, or if one of them cannot be located with reasonable
11 diligence, then service shall be made on any person having the care
12 or control of the minor, or with whom the minor resides, and on
13 the minor if the minor is at least 12 years of age.

14 (2) Not less than 10 days prior to the date for production
15 specified in the subpoena duces tecum, plus the additional time
16 provided by Section 1013 if service is by mail.

17 (3) At least five days prior to service upon the custodian of the
18 employment records, plus the additional time provided by Section
19 1013 if service is by mail.

20 (c) Prior to the production of the records, the subpoenaing party
21 shall either:

22 (1) Serve or cause to be served upon the witness a proof of
23 personal service or of service by mail attesting to compliance with
24 subdivision (b).

25 (2) Furnish the witness a written authorization to release the
26 records signed by the employee or by his or her attorney of record.
27 The witness may presume that the attorney purporting to sign the
28 authorization on behalf of the employee acted with the consent of
29 the employee, and that any objection to release of records is
30 waived.

31 (d) A subpoena duces tecum for the production of employment
32 records shall be served in sufficient time to allow the witness a
33 reasonable time, as provided in ~~paragraph (1) of subdivision (d) of~~
34 ~~Section 2020~~ Section 2020.410, to locate and produce the records
35 or copies thereof.

36 (e) Every copy of the subpoena duces tecum and affidavit
37 served on an employee or his or her attorney in accordance with
38 subdivision (b) shall be accompanied by a notice, in a typeface
39 designed to call attention to the notice, indicating that (1)
40 employment records about the employee are being sought from the

1 witness named on the subpoena; (2) the employment records may
2 be protected by a right of privacy; (3) if the employee objects to
3 the witness furnishing the records to the party seeking the records
4 the employee shall file papers with the court prior to the date
5 specified for production on the subpoena; and (4) if the
6 subpoenaing party does not agree in writing to cancel or limit the
7 subpoena, an attorney should be consulted about the employee's
8 interest in protecting his or her rights of privacy. If a notice of
9 taking of deposition is also served, that other notice may be set
10 forth in a single document with the notice required by this
11 subdivision.

12 (f) Any employee whose employment records are sought by a
13 subpoena duces tecum may, prior to the date for production, bring
14 a motion under Section 1987.1 to quash or modify the subpoena
15 duces tecum. Notice of the bringing of that motion shall be given
16 to the witness and the deposition officer at least five days prior to
17 production. The failure to provide notice to the deposition officer
18 shall not invalidate the motion to quash or modify the subpoena
19 duces tecum but may be raised by the deposition officer as an
20 affirmative defense in any action for liability for improper release
21 of records.

22 Any nonparty employee whose employment records are sought
23 by a subpoena duces tecum may, prior to the date of production,
24 serve on the subpoenaing party, and the deposition officer, the
25 witness a written objection that cites the specific grounds on which
26 production of the employment records should be prohibited.

27 No witness or deposition officer shall be required to produce
28 employment records after receipt of notice that the motion has
29 been brought by an employee, or after receipt of a written
30 objection from a nonparty employee, except upon order of the
31 court in which the action is pending or by agreement of the parties,
32 witnesses, and employees affected.

33 The party requesting an employee's employment records may
34 bring a motion under subdivision (c) of Section 1987 to enforce the
35 subpoena within 20 days of service of the written objection. The
36 motion shall be accompanied by a declaration showing a
37 reasonable and good faith attempt at informal resolution of the
38 dispute between the party requesting the employment records and
39 the employee or the employee's attorney.



(g) Upon good cause shown and provided that the rights of witness and employees are preserved, a subpoenaing party shall be entitled to obtain an order shortening the time for service of a subpoena duces tecum or waiving the requirements of subdivision (b) where due diligence by the subpoenaing party has been shown.

(h) Nothing contained in this section shall be construed to apply to any subpoena duces tecum which does not request the records of any particular employee or employees and which requires a custodian of records to delete all information which would in any way identify any employee whose records are to be produced.

(i) This section shall not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division 4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200) of the Labor Code.

(j) Failure to comply with this section shall be sufficient basis for the witness to refuse to produce the employment records sought by subpoena duces tecum.

SEC. 20. Section 1987.5 of the Code of Civil Procedure is amended to read:

1987.5. The service of a subpoena duces tecum is invalid unless at the time of such service a copy of the affidavit upon which the subpoena is based is served on the person served with the subpoena. In the case of a subpoena duces tecum which requires appearance and the production of matters and things at the taking of a deposition, the subpoena shall not be valid unless a copy of the affidavit upon which the subpoena is based and the designation of the materials to be produced, as set forth in the subpoena, is attached to the notice of taking the deposition served upon each party or its attorney as provided in Chapter 3 (commencing with Section 2002) *and in Title 4 (commencing with Section 2016.010)*. If matters and things are produced pursuant to a subpoena duces tecum in violation of this section, any other party to the action may file a motion for, and the court may grant, an order providing appropriate relief, including, but not limited to, exclusion of the evidence affected by the violation, a retaking of the deposition notwithstanding any other limitation on discovery proceedings, or a continuance. The party causing the subpoena to be served shall retain the original affidavit until final judgment in the action, and shall file the affidavit with the court only upon reasonable request

by any party or witness affected thereby. This section does not apply to deposition subpoenas commanding only the production of business records for copying under ~~subdivision (d) of Section 2020 Article 4 (commencing with Section 2020.410) of Chapter 6 of Title 4.~~

SEC. 21. Section 1991.1 of the Code of Civil Procedure is amended to read:

1991.1. Disobedience to a subpoena requiring attendance of a witness before an officer out of court in a deposition taken pursuant to ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 Title 4 (commencing with Section 2016.010),~~ or refusal to be sworn as a witness at that deposition, may be punished as contempt, as provided in ~~paragraph (5) of subdivision (b) of Section 2023 subdivision (e) of Section 2023.030,~~ without the necessity of a prior order of court directing compliance by the witness.

SEC. 22. Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure is repealed.

SEC. 23. Title 4 (commencing with Section 2016.010) is added to Part 4 of the Code of Civil Procedure, to read:

TITLE 4. CIVIL DISCOVERY ACT

CHAPTER 1. GENERAL PROVISIONS

2016.010. This title may be cited as the “Civil Discovery Act.”

2016.020. As used in this title:

(a) “Action” includes a civil action and a special proceeding of a civil nature.

(b) “Court” means the trial court in which the action is pending, unless otherwise specified.

(c) “Document” and “writing” mean a writing, as defined in Section 250 of the Evidence Code.

2016.030. Unless the court orders otherwise, the parties may by written stipulation modify the procedures provided by this title for any method of discovery permitted under Section 2019.010.

2016.040. A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith

1 attempt at an informal resolution of each issue presented by the
2 motion.

3 2016.050. Section 1013 applies to any method of discovery or
4 service of a motion provided for in this title.

5 2016.060. When the last day to perform or complete any act
6 provided for in this title falls on a Saturday, Sunday, or holiday as
7 specified in Section 10, the time limit is extended until the next day
8 that is not a Saturday, Sunday, or holiday.

9 2016.070. This title applies to discovery in aid of enforcement
10 of a money judgment only to the extent provided in Article 1
11 (commencing with Section 708.010) of Chapter 6 of Title 9 of Part
12 2.

13 CHAPTER 2. SCOPE OF DISCOVERY

14 Article 1. General Provisions

15
16
17
18 2017.010. Unless otherwise limited by order of the court in
19 accordance with this title, any party may obtain discovery
20 regarding any matter, not privileged, that is relevant to the subject
21 matter involved in the pending action or to the determination of
22 any motion made in that action, if the matter either is itself
23 admissible in evidence or appears reasonably calculated to lead to
24 the discovery of admissible evidence. Discovery may relate to the
25 claim or defense of the party seeking discovery or of any other
26 party to the action. Discovery may be obtained of the identity and
27 location of persons having knowledge of any discoverable matter,
28 as well as of the existence, description, nature, custody, condition,
29 and location of any document, tangible thing, or land or other
30 property.

31 2017.020. (a) The court shall limit the scope of discovery if
32 it determines that the burden, expense, or intrusiveness of that
33 discovery clearly outweighs the likelihood that the information
34 sought will lead to the discovery of admissible evidence. The court
35 may make this determination pursuant to a motion for protective
36 order by a party or other affected person. This motion shall be
37 accompanied by a meet and confer declaration under Section
38 2016.040.

39 (b) The court shall impose a monetary sanction under Chapter
40 7 (commencing with Section 2023.010) against any party, person,



1 or attorney who unsuccessfully makes or opposes a motion for a
2 protective order, unless it finds that the one subject to the sanction
3 acted with substantial justification or that other circumstances
4 make the imposition of the sanction unjust.

5
6 Article 2. Scope of Discovery in Specific Contexts
7

8 2017.210. A party may obtain discovery of the existence and
9 contents of any agreement under which any insurance carrier may
10 be liable to satisfy in whole or in part a judgment that may be
11 entered in the action or to indemnify or reimburse for payments
12 made to satisfy the judgment. This discovery may include the
13 identity of the carrier and the nature and limits of the coverage. A
14 party may also obtain discovery as to whether that insurance
15 carrier is disputing the agreement's coverage of the claim involved
16 in the action, but not as to the nature and substance of that dispute.
17 Information concerning the insurance agreement is not by reason
18 of disclosure admissible in evidence at trial.

19 2017.220. (a) In any civil action alleging conduct that
20 constitutes sexual harassment, sexual assault, or sexual battery,
21 any party seeking discovery concerning the plaintiff's sexual
22 conduct with individuals other than the alleged perpetrator shall
23 establish specific facts showing that there is good cause for that
24 discovery, and that the matter sought to be discovered is relevant
25 to the subject matter of the action and reasonably calculated to lead
26 to the discovery of admissible evidence. This showing shall be
27 made by a noticed motion, accompanied by a meet and confer
28 declaration under Section 2016.040, and shall not be made or
29 considered by the court at an ex parte hearing.

30 (b) The court shall impose a monetary sanction under Chapter
31 7 (commencing with Section 2023.010) against any party, person,
32 or attorney who unsuccessfully makes or opposes a motion for
33 discovery under subdivision (a), unless it finds that the one subject
34 to the sanction acted with substantial justification or that other
35 circumstances make the imposition of the sanction unjust.

Article 3. Violation of the Elder Abuse and Dependent Adult
Civil Protection Act

2017.310. (a) Notwithstanding any other provision of law, it is the policy of the State of California that confidential settlement agreements are disfavored in any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11(commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code).

(b) Provisions of a confidential settlement agreement described in subdivision (a) may not be recognized or enforced by the court absent a showing of any of the following:

(1) The information is privileged under existing law.

(2) The information is not evidence of abuse of an elder or dependent adult, as described in Sections 15610.30, 15610.57, and 15610.63 of the Welfare and Institutions Code.

(3) The party seeking to uphold the confidentiality of the information has demonstrated that there is a substantial probability that prejudice will result from the disclosure and that the party's interest in the information cannot be adequately protected through redaction.

(c) Nothing in paragraph (1), (2), or (3) of subdivision (b) permits the sealing or redacting of a defendant's name in any information made available to the public.

(d) Except as expressly provided in this section, nothing in this section is intended to alter, modify, or amend existing law.

(e) Nothing in this section may be deemed to prohibit the entry or enforcement of that part of a confidentiality agreement, settlement agreement, or stipulated agreement between the parties that requires the nondisclosure of the amount of any money paid in a settlement of a claim.

(f) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

2017.320. (a) In any civil action the factual foundation for which establishes a cause of action for a violation of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11(commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code), any information that is acquired through discovery and is protected from disclosure by a stipulated

1 protective order shall remain subject to the protective order, except
2 for information that is evidence of abuse of an elder or dependent
3 adult as described in Sections 15610.30, 15610.57, and 15610.63
4 of the Welfare and Institutions Code.

5 (b) In that instance, after redacting information in the
6 document that is not evidence of abuse of an elder or dependent
7 adult as described in Sections 15610.30, 15610.57, and 15610.63
8 of the Welfare and Institutions Code, a party may file that
9 particularized information with the court. The party proposing to
10 file the information shall offer to meet and confer with the party
11 from whom the information was obtained at least one week prior
12 to filing that information with the court.

13 (c) The filing party shall give concurrent notice of the filing
14 with the court and its basis to the party from whom the information
15 was obtained.

16 (d) Any filed information submitted to the court shall remain
17 confidential under any protective order for 30 days after the filing
18 and shall be part of the public court record thereafter, unless an
19 affected party petitions the court and shows good cause for a court
20 protective order.

21 (e) The burden of showing good cause shall be on the party
22 seeking the court protective order.

23 (f) A stipulated protective order may not be recognized or
24 enforced by the court to prevent disclosure of information filed
25 with the court pursuant to subdivision (b), absent a showing of any
26 of the following:

27 (1) The information is privileged under existing law.

28 (2) The information is not evidence of abuse of an elder or
29 dependent adult as described in Sections 15610.30, 15610.57, and
30 15610.63 of the Welfare and Institutions Code.

31 (3) The party seeking to uphold the confidentiality of the
32 information has demonstrated that there is a substantial probability
33 that prejudice will result from the disclosure and that the party's
34 interest in the information cannot be adequately protected through
35 redaction.

36 (g) If the court denies the petition for a court protective order,
37 it shall redact any part of the filed information it finds is not
38 evidence of abuse of an elder or dependent adult, as described in
39 Sections 15610.30, 15610.57, and 15610.63 of the Welfare and
40 Institutions Code. Nothing in this subdivision or in paragraph (1),

(2), or (3) of subdivision (f) permits the sealing or redacting of a defendant's name in any information made available to the public.

(h) Nothing in this section applies to or affects an action for professional negligence against a health care provider.

CHAPTER 3. USE OF TECHNOLOGY IN CONDUCTING DISCOVERY
IN A COMPLEX CASE

2017.710. Subject to the findings required by Section 2017.730 and the purpose of permitting and encouraging cost-effective and efficient discovery, "technology," as used in this chapter, includes, but is not limited to, telephone, e-mail, CD-ROM, Internet Web sites, electronic documents, electronic document depositories, Internet depositions and storage, videoconferencing, and other electronic technology that may be used to improve communication and the discovery process.

2017.720. (a) Nothing in this chapter diminishes the rights and duties of the parties regarding discovery, privileges, procedural rights, or substantive law.

(b) Nothing in this chapter modifies the requirement for use of a stenographic court reporter as provided in Section 2025.330. The rules, standards, and guidelines adopted pursuant to this chapter shall be consistent with the requirement of Section 2025.330 that deposition testimony be taken stenographically unless the parties agree or the court orders otherwise.

(c) Nothing in this chapter modifies or affects in any way the process used for the selection of a stenographic court reporter.

2017.730. (a) Pursuant to a noticed motion, a court may enter an order authorizing the use of technology in conducting discovery in any of the following:

(1) A case designated as complex under Section 19 of the Judicial Administration Standards.

(2) A case ordered to be coordinated under Chapter 3 (commencing with Section 404) of Title 4 of Part 2.

(3) An exceptional case exempt from case disposition time goals under Article 5 (commencing with Section 68600) of Chapter 2 of Title 8 of the Government Code.

(4) A case assigned to Plan 3 under paragraph (3) of subdivision (b) of Section 2105 of the California Rules of Court.

1 (b) In a case other than one listed in subdivision (a), the parties
2 may stipulate to the entry of an order authorizing the use of
3 technology in conducting discovery.

4 (c) An order authorizing the use of technology in conducting
5 discovery may be made only upon the express findings of the court
6 or stipulation of the parties that the procedures adopted in the order
7 meet all of the following criteria:

8 (1) They promote cost-effective and efficient discovery or
9 motions relating thereto.

10 (2) They do not impose or require an undue expenditure of time
11 or money.

12 (3) They do not create an undue economic burden or hardship
13 on any person.

14 (4) They promote open competition among vendors and
15 providers of services in order to facilitate the highest quality
16 service at the lowest reasonable cost to the litigants.

17 (5) They do not require the parties or counsel to purchase
18 exceptional or unnecessary services, hardware, or software.

19 (d) Pursuant to an order authorizing the use of technology in
20 conducting discovery, discovery may be conducted and
21 maintained in electronic media and by electronic communication.
22 The court may enter orders prescribing procedures relating to the
23 use of electronic technology in conducting discovery, including
24 orders for service of discovery requests and responses, service and
25 presentation of motions, conduct of discovery in electronic media,
26 and production, storage, and access to information in electronic
27 form.

28 (e) The Judicial Council may promulgate rules, standards, and
29 guidelines relating to electronic discovery and the use of electronic
30 discovery data and documents in court proceedings.

31 2017.740. (a) If a service provider is to be used and
32 compensated by the parties in discovery under this chapter, the
33 court shall appoint the person or organization agreed on by the
34 parties and approve the contract agreed on by the parties and the
35 service provider. If the parties do not agree on selection of a service
36 provider, each party shall submit to the court up to three nominees
37 for appointment, together with a contract acceptable to the
38 nominee. The court shall appoint a service provider from among
39 the nominees. The court may condition this appointment on the
40 acceptance of modifications in the terms of the contract. If no

1 nominations are received from any of the parties, the court shall
2 appoint one or more service providers.

3 (b) Pursuant to a noticed motion at any time and on a showing
4 of good cause, the court may order the removal of the service
5 provider or vacate any agreement between the parties and the
6 service provider, or both, effective as of the date of the order. The
7 continued service of the service provider shall be subject to review
8 periodically, as agreed by the parties and the service provider, or
9 annually if they do not agree. Any disputes involving the contract
10 or the duties, rights, and obligations of the parties or the service
11 provider may be determined on a noticed motion in the action.

12
13 CHAPTER 4. ATTORNEY WORK PRODUCT
14

15 2018.010. For purposes of this chapter, “client” means a
16 “client” as defined in Section 951 of the Evidence Code.

17 2018.020. It is the policy of the state to do both of the
18 following:

19 (a) Preserve the rights of attorneys to prepare cases for trial
20 with that degree of privacy necessary to encourage them to prepare
21 their cases thoroughly and to investigate not only the favorable but
22 the unfavorable aspects of those cases.

23 (b) Prevent attorneys from taking undue advantage of their
24 adversary’s industry and efforts.

25 2018.030. (a) A writing that reflects an attorney’s
26 impressions, conclusions, opinions, or legal research or theories is
27 not discoverable under any circumstances.

28 (b) The work product of an attorney, other than a writing
29 described in subdivision (a), is not discoverable unless the court
30 determines that denial of discovery will unfairly prejudice the
31 party seeking discovery in preparing that party’s claim or defense
32 or will result in an injustice.

33 2018.040. This chapter is intended to be a restatement of
34 existing law relating to protection of work product. It is not
35 intended to expand or reduce the extent to which work product is
36 discoverable under existing law in any action.

37 2018.050. Notwithstanding Section 2018.040, when a lawyer
38 is suspected of knowingly participating in a crime or fraud, there
39 is no protection of work product under this chapter in any official
40 investigation by a law enforcement agency or proceeding or action

brought by a public prosecutor in the name of the people of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.

2018.060. Nothing in this chapter is intended to limit an attorney's ability to request an in camera hearing as provided for in *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703.

2018.070. (a) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer and requisite client approval has been granted.

(b) Where requested and for good cause, discovery under this section shall be subject to a protective order to ensure the confidentiality of the work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings.

(c) For purposes of this chapter, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted.

2018.080. In an action between an attorney and a client or a former client of the attorney, no work product privilege under this chapter exists if the work product is relevant to an issue of breach by the attorney of a duty to the client arising out of the attorney-client relationship.

CHAPTER 5. METHODS AND SEQUENCE OF DISCOVERY

Article 1. General Provisions

2019.010. Any party may obtain discovery by one or more of the following methods:

(a) Oral and written depositions.

(b) Interrogatories to a party.

(c) Inspections of documents, things, and places.

(d) Physical and mental examinations.

(e) Requests for admissions.

(f) Simultaneous exchanges of expert trial witness information.

2019.020. (a) Except as otherwise provided by a rule of the Judicial Council, a local court rule, or a local uniform written

1 policy, the methods of discovery may be used in any sequence, and
2 the fact that a party is conducting discovery, whether by deposition
3 or another method, shall not operate to delay the discovery of any
4 other party.

5 (b) Notwithstanding subdivision (a), on motion and for good
6 cause shown, the court may establish the sequence and timing of
7 discovery for the convenience of parties and witnesses and in the
8 interests of justice.

9 2019.030. (a) The court shall restrict the frequency or extent
10 of use of a discovery method provided in Section 2019.010 if it
11 determines either of the following:

12 (1) The discovery sought is unreasonably cumulative or
13 duplicative, or is obtainable from some other source that is more
14 convenient, less burdensome, or less expensive.

15 (2) The selected method of discovery is unduly burdensome or
16 expensive, taking into account the needs of the case, the amount
17 in controversy, and the importance of the issues at stake in the
18 litigation.

19 (b) The court may make these determinations pursuant to a
20 motion for a protective order by a party or other affected person.
21 This motion shall be accompanied by a meet and confer
22 declaration under Section 2016.040.

23 (c) The court shall impose a monetary sanction under Chapter
24 7 (commencing with Section 2023.010) against any party, person,
25 or attorney who unsuccessfully makes or opposes a motion for a
26 protective order, unless it finds that the one subject to the sanction
27 acted with substantial justification or that other circumstances
28 make the imposition of the sanction unjust.

29
30 Article 2. Methods and Sequence of Discovery in Specific
31 Contexts
32

33 2019.210. In any action alleging the misappropriation of a
34 trade secret under the Uniform Trade Secrets Act (Title 5
35 (commencing with Section 3426) of Part 1 of Division 4 of the
36 Civil Code), before commencing discovery relating to the trade
37 secret, the party alleging the misappropriation shall identify the
38 trade secret with reasonable particularity subject to any orders that
39 may be appropriate under Section 3426.5 of the Civil Code.
40

CHAPTER 6. NONPARTY DISCOVERY

Article 1. General Provisions

2020.010. (a) Any of the following methods may be used to obtain discovery within the state from a person who is not a party to the action in which the discovery is sought:

(1) An oral deposition under Chapter 9 (commencing with Section 2025.010).

(2) A written deposition under Chapter 11 (commencing with Section 2028.010).

(3) A deposition for production of business records and things under Article 4 (commencing with Section 2020.410) or Article 5 (commencing with Section 2020.510).

(b) Except as provided in subdivision (a) of Section 2025.280, the process by which a nonparty is required to provide discovery is a deposition subpoena.

2020.020. A deposition subpoena may command any of the following:

(a) Only the attendance and the testimony of the deponent, under Article 3 (commencing with Section 2020.310).

(b) Only the production of business records for copying, under Article 4 (commencing with Section 2020.410).

(c) The attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under Article 5 (commencing with Section 2020.510).

2020.030. Except as modified in this chapter, the provisions of Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of this code, and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

Article 2. Procedures Applicable to All Types of Deposition Subpoenas

2020.210. (a) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Instead of a court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena. A deposition subpoena issued under this subdivision need not be sealed. A copy may be served on the nonparty, and the attorney may retain the original.

2020.220. (a) Subject to subdivision (c) of Section 2020.410, service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, as described in Article 4 (commencing with Section 2020.410), and, where personal attendance is commanded, a reasonable time to travel to the place of deposition.

(b) Any person may serve the subpoena by personal delivery of a copy of it as follows:

(1) If the deponent is a natural person, to that person.

(2) If the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

(c) Personal service of any deposition subpoena is effective to require all of the following of any deponent who is a resident of California at the time of service:

(1) Personal attendance and testimony, if the subpoena so specifies.

(2) Any specified production, inspection, testing, and sampling.

(3) The deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or photocopying, if the subpoena so specifies, or specified testing and sampling of the items produced.

2020.230. (a) If a deposition subpoena requires the personal attendance of the deponent, under Article 3 (commencing with Section 2020.310) or Article 5 (commencing with Section 2020.510), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party

1 noticing the deposition, either at the time of service of the
2 deposition subpoena, or at the time the deponent attends for the
3 taking of testimony.

4 (b) Service of a deposition subpoena that does not require the
5 personal attendance of a custodian of records or other qualified
6 person, under Article 4 (commencing with Section 2020.410),
7 shall be accompanied, whether or not demanded by the deponent,
8 by a payment in cash or by check of the witness fee required by
9 paragraph (6) of subdivision (b) of Section 1563 of the Evidence
10 Code.

11 2020.240. A deponent who disobeys a deposition subpoena in
12 any manner described in subdivision (c) of Section 2020.220 may
13 be punished for contempt under Chapter 7 (commencing with
14 Section 2023.010) without the necessity of a prior order of court
15 directing compliance by the witness. The deponent is also subject
16 to the forfeiture and the payment of damages set forth in Section
17 1992.

18
19 Article 3. Subpoena Commanding Only Attendance and
20 Testimony of the Deponent
21

22 2020.310. The following rules apply to a deposition subpoena
23 that commands only the attendance and the testimony of the
24 deponent:

25 (a) The subpoena shall specify the time when and the place
26 where the deponent is commanded to attend the deposition.

27 (b) The subpoena shall set forth a summary of all of the
28 following:

29 (1) The nature of a deposition.

30 (2) The rights and duties of the deponent.

31 (3) The penalties for disobedience of a deposition subpoena, as
32 described in Section 2020.240.

33 (c) If the deposition will be recorded using audio or video
34 technology by, or at the direction of, the noticing party under
35 Section 2025.340, the subpoena shall state that it will be recorded
36 in that manner.

37 (d) If the deposition testimony will be conducted using instant
38 visual display, the subpoena shall state that it will be conducted in
39 that manner.

(e) If the deponent is an organization, the subpoena shall describe with reasonable particularity the matters on which examination is requested. The subpoena shall also advise the organization of its duty to make the designation of employees or agents who will attend the deposition, as described in Section 2025.230.

Article 4. Subpoena Commanding Only Production of
Business Records for Copying

2020.410. (a) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item.

(b) Notwithstanding subdivision (a), specific information identifiable only to the deponent's records system, like a policy number or the date when a consumer interacted with the witness, is not required.

(c) A deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with Section 2020.430 on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

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

2020.420. The officer for a deposition seeking discovery only of business records for copying under this article shall be a

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

11 2020.430. (a) Except as provided in subdivision (e), if a
12 deposition subpoena commands only the production of business
13 records for copying, the custodian of the records or other qualified
14 person shall, in person, by messenger, or by mail, deliver both of
15 the following only to the deposition officer specified in the
16 subpoena:

17 (1) A true, legible, and durable copy of the records.

18 (2) An affidavit in compliance with Section 1561 of the
19 Evidence Code.

20 (b) If the delivery required by subdivision (a) is made to the
21 office of the deposition officer, the records shall be enclosed,
22 sealed, and directed as described in subdivision (c) of Section 1560
23 of the Evidence Code.

24 (c) If the delivery required by subdivision (a) is made at the
25 office of the business whose records are the subject of the
26 deposition subpoena, the custodian of those records or other
27 qualified person shall do one of the following:

28 (1) Permit the deposition officer specified in the deposition
29 subpoena to make a copy of the originals of the designated
30 business records during normal business hours, as defined in
31 subdivision (e) of Section 1560 of the Evidence Code.

32 (2) Deliver to the deposition officer a true, legible, and durable
33 copy of the records on receipt of payment in cash or by check, by
34 or on behalf of the party serving the deposition subpoena, of the
35 reasonable costs of preparing that copy, together with an itemized
36 statement of the cost of preparation, as determined under
37 subdivision (b) of Section 1563 of the Evidence Code. This copy
38 need not be delivered in a sealed envelope.

39 (d) Unless the parties, and if the records are those of a consumer
40 as defined in Section 1985.3 or 1985.6, the consumer, stipulate to



1 an earlier date, the custodian of the records shall not deliver to the
2 deposition officer the records that are the subject of the deposition
3 subpoena prior to the date and time specified in the deposition
4 subpoena. The following legend shall appear in boldface type on
5 the deposition subpoena immediately following the date and time
6 specified for production: “Do not release the requested records to
7 the deposition officer prior to the date and time stated above.”

8 (e) This section does not apply if the subpoena directs the
9 deponent to make the records available for inspection or copying
10 by the subpoenaing party’s attorney or a representative of that
11 attorney at the witness’ business address under subdivision (e) of
12 Section 1560 of the Evidence Code.

13 (f) The provisions of Section 1562 of the Evidence Code
14 concerning the admissibility of the affidavit of the custodian or
15 other qualified person apply to a deposition subpoena served under
16 this article.

17 2020.440. Promptly on or after the deposition date and after
18 the receipt or the making of a copy of business records under this
19 article, the deposition officer shall provide that copy to the party
20 at whose instance the deposition subpoena was served, and a copy
21 of those records to any other party to the action who then or
22 subsequently, within a period of six months following the
23 settlement of the case, notifies the deposition officer that the party
24 desires to purchase a copy of those records.

25
26 Article 5. Subpoena Commanding Both Production of
27 Business Records and Attendance and Testimony of the
28 Deponent
29

30 2020.510. (a) A deposition subpoena that commands the
31 attendance and the testimony of the deponent, as well as the
32 production of business records, documents, and tangible things,
33 shall:

34 (1) Comply with the requirements of Section 2020.310.

35 (2) Designate the business records, documents, and tangible
36 things to be produced either by specifically describing each
37 individual item or by reasonably particularizing each category of
38 item.

39 (3) Specify any testing or sampling that is being sought.



1 (b) A deposition subpoena under subdivision (a) need not be
2 accompanied by an affidavit or declaration showing good cause
3 for the production of the documents and things designated.

4 (c) Where, as described in Section 1985.3, the person to whom
5 the deposition subpoena is directed is a witness, and the business
6 records described in the deposition subpoena are personal records
7 pertaining to a consumer, the service of the deposition subpoena
8 shall be accompanied either by a copy of the proof of service of the
9 notice to the consumer described in subdivision (e) of Section
10 1985.3, or by the consumer's written authorization to release
11 personal records described in paragraph (2) of subdivision (c) of
12 Section 1985.3.

13
14 CHAPTER 7. SANCTIONS
15

16 2023.010. Misuses of the discovery process include, but are
17 not limited to, the following:

18 (a) Persisting, over objection and without substantial
19 justification, in an attempt to obtain information or materials that
20 are outside the scope of permissible discovery.

21 (b) Using a discovery method in a manner that does not comply
22 with its specified procedures.

23 (c) Employing a discovery method in a manner or to an extent
24 that causes unwarranted annoyance, embarrassment, or
25 oppression, or undue burden and expense.

26 (d) Failing to respond or to submit to an authorized method of
27 discovery.

28 (e) Making, without substantial justification, an unmeritorious
29 objection to discovery.

30 (f) Making an evasive response to discovery.

31 (g) Disobeying a court order to provide discovery.

32 (h) Making or opposing, unsuccessfully and without
33 substantial justification, a motion to compel or to limit discovery.

34 (i) Failing to confer in person, by telephone, or by letter with
35 an opposing party or attorney in a reasonable and good faith
36 attempt to resolve informally any dispute concerning discovery, if
37 the section governing a particular discovery motion requires the
38 filing of a declaration stating facts showing that an attempt at
39 informal resolution has been made.

1 2023.020. Notwithstanding the outcome of the particular
2 discovery motion, the court shall impose a monetary sanction
3 ordering that any party or attorney who fails to confer as required
4 pay the reasonable expenses, including attorney's fees, incurred by
5 anyone as a result of that conduct.

6 2023.030. To the extent authorized by the chapter governing
7 any particular discovery method or any other provision of this title,
8 the court, after notice to any affected party, person, or attorney, and
9 after opportunity for hearing, may impose the following sanctions
10 against anyone engaging in conduct that is a misuse of the
11 discovery process:

12 (a) The court may impose a monetary sanction ordering that
13 one engaging in the misuse of the discovery process, or any
14 attorney advising that conduct, or both pay the reasonable
15 expenses, including attorney's fees, incurred by anyone as a result
16 of that conduct. The court may also impose this sanction on one
17 unsuccessfully asserting that another has engaged in the misuse of
18 the discovery process, or on any attorney who advised that
19 assertion, or on both. If a monetary sanction is authorized by any
20 provision of this title, the court shall impose that sanction unless
21 it finds 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 (b) The court may impose an issue sanction ordering that
25 designated facts shall be taken as established in the action in
26 accordance with the claim of the party adversely affected by the
27 misuse of the discovery process. The court may also impose an
28 issue sanction by an order prohibiting any party engaging in the
29 misuse of the discovery process from supporting or opposing
30 designated claims or defenses.

31 (c) The court may impose an evidence sanction by an order
32 prohibiting any party engaging in the misuse of the discovery
33 process from introducing designated matters in evidence.

34 (d) The court may impose a terminating sanction by one of the
35 following orders:

36 (1) An order striking out the pleadings or parts of the pleadings
37 of any party engaging in the misuse of the discovery process.

38 (2) An order staying further proceedings by that party until an
39 order for discovery is obeyed.

(3) An order dismissing the action, or any part of the action, of that party.

(4) An order rendering a judgment by default against that party.

(e) The court may impose a contempt sanction by an order treating the misuse of the discovery process as a contempt of court.

2023.040. A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought.

CHAPTER 8. TIME FOR COMPLETION OF DISCOVERY

2024.010. As used in this chapter, discovery is considered completed on the day a response is due or on the day a deposition begins.

2024.020. (a) Except as otherwise provided in this chapter, any party shall be entitled as a matter of right to complete discovery proceedings on or before the 30th day, and to have motions concerning discovery heard on or before the 15th day, before the date initially set for the trial of the action.

(b) Except as provided in Section 2024.050, a continuance or postponement of the trial date does not operate to reopen discovery proceedings.

2024.030. Any party shall be entitled as a matter of right to complete discovery proceedings pertaining to a witness identified under Chapter 18 (commencing with Section 2034.010) on or before the 15th day, and to have motions concerning that discovery heard on or before the 10th day, before the date initially set for the trial of the action.

2024.040. (a) The time limit on completing discovery in an action to be arbitrated under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 is subject to Judicial Council Rule. After an award in a case ordered to judicial arbitration, completion of discovery is limited by Section 1141.24.

(b) This chapter does not apply to either of the following:

(1) Summary proceedings for obtaining possession of real property governed by Chapter 4 (commencing with Section 1159) of Title 3 of Part 3. Except as provided in Sections 2024.050 and

1 2025.060, discovery in these proceedings shall be completed on or
2 before the fifth day before the date set for trial.

3 (2) Eminent domain proceedings governed by Title 7
4 (commencing with Section 1230.010) of Part 3.

5 2024.050. (a) On motion of any party, the court may grant
6 leave to complete discovery proceedings, or to have a motion
7 concerning discovery heard, closer to the initial trial date, or to
8 reopen discovery after a new trial date has been set. This motion
9 shall be accompanied by a meet and confer declaration under
10 Section 2016.040.

11 (b) In exercising its discretion to grant or deny this motion, the
12 court shall take into consideration any matter relevant to the leave
13 requested, including, but not limited to, the following:

14 (1) The necessity and the reasons for the discovery.

15 (2) The diligence or lack of diligence of the party seeking the
16 discovery or the hearing of a discovery motion, and the reasons
17 that the discovery was not completed or that the discovery motion
18 was not heard earlier.

19 (3) Any likelihood that permitting the discovery or hearing the
20 discovery motion will prevent the case from going to trial on the
21 date set, or otherwise interfere with the trial calendar, or result in
22 prejudice to any other party.

23 (4) The length of time that has elapsed between any date
24 previously set, and the date presently set, for the trial of the action.

25 (c) The court shall impose a monetary sanction under Chapter
26 7 (commencing with Section 2023.010) against any party, person,
27 or attorney who unsuccessfully makes or opposes a motion to
28 extend or to reopen discovery, unless it finds that the one subject
29 to the sanction acted with substantial justification or that other
30 circumstances make the imposition of the sanction unjust.

31 2024.060. Parties to an action may, with the consent of any
32 party affected by it, enter into an agreement to extend the time for
33 the completion of discovery proceedings or for the hearing of
34 motions concerning discovery, or to reopen discovery after a new
35 date for trial of the action has been set. This agreement may be
36 informal, but it shall be confirmed in a writing that specifies the
37 extended date. In no event shall this agreement require a court to
38 grant a continuance or postponement of the trial of the action.
39

CHAPTER 9. ORAL DEPOSITION INSIDE CALIFORNIA

Article 1. General Provisions

2025.010. Any party may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010) and Chapter 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

Article 2. Deposition Notice

2025.210. Subject to Sections 2025.270 and 2025.610, an oral deposition may be taken as follows:

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

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

2025.220. (a) A party desiring to take the oral deposition of any person shall give notice in writing. The deposition notice shall state all of the following:

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

(2) The date of the deposition, selected under Section 2025.270, and the time it will commence.

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

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

1 (5) Any intention by the party noticing the deposition to record
2 the testimony by audio or video technology, in addition to
3 recording the testimony by the stenographic method as required by
4 Section 2025.330 and any intention to record the testimony by
5 stenographic method through the instant visual display of the
6 testimony. If the deposition will be conducted using instant visual
7 display, a copy of the deposition notice shall also be given to the
8 deposition officer. Any offer to provide the instant visual display
9 of the testimony or to provide rough draft transcripts to any party
10 which is accepted prior to, or offered at, the deposition shall also
11 be made by the deposition officer at the deposition to all parties in
12 attendance. Any party or attorney requesting the provision of the
13 instant visual display of the testimony, or rough draft transcripts,
14 shall pay the reasonable cost of those services, which may be no
15 greater than the costs charged to any other party or attorney.

16 (6) Any intention to reserve the right to use at trial a video
17 recording of the deposition testimony of a treating or consulting
18 physician or of any expert witness under subdivision (d) of Section
19 2025.620. In this event, the operator of the video camera shall be
20 a person who is authorized to administer an oath, and shall not be
21 financially interested in the action or be a relative or employee of
22 any attorney of any of the parties.

23 (b) Notwithstanding subdivision (a), where under Article 4
24 (commencing with Section 2020.410) only the production by a
25 nonparty of business records for copying is desired, a copy of the
26 deposition subpoena shall serve as the notice of deposition.

27 2025.230. If the deponent named is not a natural person, the
28 deposition notice shall describe with reasonable particularity the
29 matters on which examination is requested. In that event, the
30 deponent shall designate and produce at the deposition those of its
31 officers, directors, managing agents, employees, or agents who are
32 most qualified to testify on its behalf as to those matters to the
33 extent of any information known or reasonably available to the
34 deponent.

35 2025.240. (a) The party who prepares a notice of deposition
36 shall give the notice to every other party who has appeared in the
37 action. The deposition notice, or the accompanying proof of
38 service, shall list all the parties or attorneys for parties on whom
39 it is served.



(b) Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer all of the following:

(1) A notice of the deposition.

(2) The notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6.

(3) A copy of the deposition subpoena.

(c) If the attendance of the deponent is to be compelled by service of a deposition subpoena under Chapter 6 (commencing with Section 2020.010), an identical copy of that subpoena shall be served with the deposition notice.

2025.250. (a) Unless the court orders otherwise under Section 2025.260, the deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence.

(b) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office.

(c) Unless the organization consents to a more distant place, the deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

2025.260. (a) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under Section 2025.250. This motion

1 shall be accompanied by a meet and confer declaration under
2 Section 2016.040.

3 (b) In exercising its discretion to grant or deny this motion, the
4 court shall take into consideration any factor tending to show
5 whether the interests of justice will be served by requiring the
6 deponent's attendance at that more distant place, including, but not
7 limited to, the following:

8 (1) Whether the moving party selected the forum.

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

11 (3) The convenience of the deponent.

12 (4) The feasibility of conducting the deposition by written
13 questions under Chapter 11 (commencing with Section 2028.010),
14 or of using a discovery method other than a deposition.

15 (5) The number of depositions sought to be taken at a place
16 more distant than that permitted under Section 2025.250.

17 (6) The expense to the parties of requiring the deposition to be
18 taken within the distance permitted under Section 2025.250.

19 (7) The whereabouts of the deponent at the time for which the
20 deposition is scheduled.

21 (c) The order may be conditioned on the advancement by the
22 moving party of the reasonable expenses and costs to the deponent
23 for travel to the place of deposition.

24 (d) The court shall impose a monetary sanction under Chapter
25 7 (commencing with Section 2023.010) against any party, person,
26 or attorney who unsuccessfully makes or opposes a motion to
27 increase the travel limits for a party deponent, unless it finds that
28 the one subject to the sanction acted with substantial justification
29 or that other circumstances make the imposition of the sanction
30 unjust.

31 2025.270. (a) An oral deposition shall be scheduled for a date
32 at least 10 days after service of the deposition notice. If, as defined
33 in subdivision (a) of Section 1985.3, the party giving notice of the
34 deposition is a subpoenaing party, and the deponent is a witness
35 commanded by a deposition subpoena to produce personal records
36 of a consumer, the deposition shall be scheduled for a date at least
37 20 days after issuance of that subpoena.

38 (b) Notwithstanding subdivision (a), in an unlawful detainer
39 action an oral deposition shall be scheduled for a date at least five



days after service of the deposition notice, but not later than five days before trial.

(c) On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under Section 2025.420.

2025.280. (a) The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(b) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Chapter 6 (commencing with Section 2020.010).

Article 3. Conduct of Deposition

2025.310. (a) A person may take, and any person other than the deponent may attend, a deposition by telephone or other remote electronic means.

(b) The court may expressly provide that a nonparty deponent may appear at the deposition by telephone if it finds there is good cause and no prejudice to any party. A party deponent shall appear at the deposition in person and be in the presence of the deposition officer.

(c) The procedures to implement this section shall be established by court order in the specific action or proceeding or by the California Rules of Court.

2025.320. Except as provided in Section 2020.420, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath and is subject to all of the following requirements:

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

(b) Services and products offered or provided by the deposition officer or the entity providing the services of the deposition officer

1 to any party or to any party's attorney or third party who is
2 financing all or part of the action shall be offered to all parties or
3 their attorneys attending the deposition. No service or product may
4 be offered or provided by the deposition officer or by the entity
5 providing the services of the deposition officer to any party or any
6 party's attorney or third party who is financing all or part of the
7 action unless the service or product is offered or provided to all
8 parties or their attorneys attending the deposition. All services and
9 products offered or provided shall be made available at the same
10 time to all parties or their attorneys.

11 (c) The deposition officer or the entity providing the services
12 of the deposition officer shall not provide to any party or any
13 party's attorney or third party who is financing all or part of the
14 action any service or product consisting of the deposition officer's
15 notations or comments regarding the demeanor of any witness,
16 attorney, or party present at the deposition. The deposition officer
17 or entity providing the services of the deposition officer shall not
18 collect any personal identifying information about the witness as
19 a service or product to be provided to any party or third party who
20 is financing all or part of the action.

21 (d) Upon the request of any party or any party's attorney
22 attending a deposition, any party or any party's attorney attending
23 the deposition shall enter in the record of the deposition all services
24 and products made available to that party or party's attorney or
25 third party who is financing all or part of the action by the
26 deposition officer or by the entity providing the services of the
27 deposition officer. A party in the action who is not represented by
28 an attorney shall be informed by the noticing party or the party's
29 attorney that the unrepresented party may request this statement.

30 (e) Any objection to the qualifications of the deposition officer
31 is waived unless made before the deposition begins or as soon
32 thereafter as the ground for that objection becomes known or could
33 be discovered by reasonable diligence.

34 (f) Violation of this section by any person may result in a civil
35 penalty of up to five thousand dollars (\$5,000) imposed by a court
36 of competent jurisdiction.

37 2025.330. (a) The deposition officer shall put the deponent
38 under oath.

1 (b) Unless the parties agree or the court orders otherwise, the
2 testimony, as well as any stated objections, shall be taken
3 stenographically.

4 (c) The party noticing the deposition may also record the
5 testimony by audio or video technology if the notice of deposition
6 stated an intention also to record the testimony by either of those
7 methods, or if all the parties agree that the testimony may also be
8 recorded by either of those methods. Any other party, at that
9 party's expense, may make a simultaneous audio or video record
10 of the deposition, provided that the other party promptly, and in no
11 event less than three calendar days before the date for which the
12 deposition is scheduled, serves a written notice of this intention to
13 make an audio or video record of the deposition testimony on the
14 party or attorney who noticed the deposition, on all other parties
15 or attorneys on whom the deposition notice was served under
16 Section 2025.240, and on any deponent whose attendance is being
17 compelled by a deposition subpoena under Chapter 6
18 (commencing with Section 2020.010). If this notice is given three
19 calendar days before the deposition date, it shall be made by
20 personal service under Section 1011.

21 (d) Examination and cross-examination of the deponent shall
22 proceed as permitted at trial under the provisions of the Evidence
23 Code.

24 (e) In lieu of participating in the oral examination, parties may
25 transmit written questions in a sealed envelope to the party taking
26 the deposition for delivery to the deposition officer, who shall
27 unseal the envelope and propound them to the deponent after the
28 oral examination has been completed.

29 2025.340. If a deposition is being recorded by means of audio
30 or video technology by, or at the direction of, any party, the
31 following procedure shall be observed:

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

34 (b) The operator of the recording equipment shall be competent
35 to set up, operate, and monitor the equipment in the manner
36 prescribed in this section. Except as provided in subdivision (c),
37 the operator may be an employee of the attorney taking the
38 deposition unless the operator is also the deposition officer.

39 (c) If a video recording of deposition testimony is to be used
40 under subdivision (d) of Section 2025.620, the operator of the

1 recording equipment shall be a person who is authorized to
2 administer an oath, and shall not be financially interested in the
3 action or be a relative or employee of any attorney of any of the
4 parties, unless all parties attending the deposition agree on the
5 record to waive these qualifications and restrictions.

6 (d) Services and products offered or provided by the deposition
7 officer or the entity providing the services of the deposition officer
8 to any party or to any party's attorney or third party who is
9 financing all or part of the action shall be offered or provided to
10 all parties or their attorneys attending the deposition. No service
11 or product may be offered or provided by the deposition officer or
12 by the entity providing the services of the deposition officer to any
13 party or any party's attorney or third party who is financing all or
14 part of the action unless the service or product is offered or
15 provided to all parties or their attorneys attending the deposition.
16 All services and products offered or provided shall be made
17 available at the same time to all parties or their attorneys.

18 (e) The deposition officer or the entity providing the services
19 of the deposition officer shall not provide to any party or any other
20 person or entity any service or product consisting of the deposition
21 officer's notations or comments regarding the demeanor of any
22 witness, attorney, or party present at the deposition. The deposition
23 officer or the entity providing the services of the deposition officer
24 shall not collect any personal identifying information about the
25 witness as a service or product to be provided to any party or third
26 party who is financing all or part of the action.

27 (f) Upon the request of any party or any party's attorney
28 attending a deposition, any party or any party's attorney attending
29 the deposition shall enter in the record of the deposition all services
30 and products made available to that party or party's attorney or
31 third party who is financing all or part of the action by the
32 deposition officer or by the entity providing the services of the
33 deposition officer. A party in the action who is not represented by
34 an attorney shall be informed by the noticing party that the
35 unrepresented party may request this statement.

36 (g) The operator shall not distort the appearance or the
37 demeanor of participants in the deposition by the use of camera or
38 sound recording techniques.

39 (h) The deposition shall begin with an oral or written statement
40 on camera or on the audio recording that includes the operator's

1 name and business address, the name and business address of the
2 operator's employer, the date, time, and place of the deposition,
3 the caption of the case, the name of the deponent, a specification
4 of the party on whose behalf the deposition is being taken, and any
5 stipulations by the parties.

6 (i) Counsel for the parties shall identify themselves on camera
7 or on the audio recording.

8 (j) The oath shall be administered to the deponent on camera or
9 on the audio recording.

10 (k) If the length of a deposition requires the use of more than
11 one unit of tape or electronic storage, the end of each unit and the
12 beginning of each succeeding unit shall be announced on camera
13 or on the audio recording.

14 (l) At the conclusion of a deposition, a statement shall be made
15 on camera or on the audio recording that the deposition is ended
16 and shall set forth any stipulations made by counsel concerning the
17 custody of the audio or video recording and the exhibits, or
18 concerning other pertinent matters.

19 (m) A party intending to offer an audio or video recording of
20 a deposition in evidence under Section 2025.620 shall notify the
21 court and all parties in writing of that intent and of the parts of the
22 deposition to be offered. That notice shall be given within
23 sufficient time for objections to be made and ruled on by the judge
24 to whom the case is assigned for trial or hearing, and for any
25 editing of the recording. Objections to all or part of the deposition
26 shall be made in writing. The court may permit further
27 designations of testimony and objections as justice may require.
28 With respect to those portions of an audio or video record of
29 deposition testimony that are not designated by any party or that
30 are ruled to be objectionable, the court may order that the party
31 offering the recording of the deposition at the trial or hearing
32 suppress those portions, or that an edited version of the deposition
33 recording be prepared for use at the trial or hearing. The original
34 audio or video record of the deposition shall be preserved
35 unaltered. If no stenographic record of the deposition testimony
36 has previously been made, the party offering an audio or video
37 recording of that testimony under Section 2025.620 shall
38 accompany that offer with a stenographic transcript prepared from
39 that recording.

40



Article 4. Objections, Sanctions, Protective Orders, Motions
to Compel, and Suspension of Depositions

2025.410. (a) Any party served with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served.

(b) If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under Section 2025.620 if the party did not attend the deposition and if the court determines that the objection was a valid one.

(c) In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a meet and confer declaration under Section 2016.040. The taking of the deposition is stayed pending the determination of this motion.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

2025.420. (a) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This

1 protective order may include, but is not limited to, one or more of
2 the following directions:

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

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

5 (3) That a video recording of the deposition testimony of a
6 treating or consulting physician or of any expert witness, intended
7 for possible use at trial under subdivision (d) of Section 2025.620,
8 be postponed until the moving party has had an adequate
9 opportunity to prepare, by discovery deposition of the deponent,
10 or other means, for cross-examination.

11 (4) That the deposition be taken at a place other than that
12 specified in the deposition notice, if it is within a distance
13 permitted by Sections 2025.250 and 2025.260.

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

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

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

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

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

23 (10) That the scope of the examination be limited to certain
24 matters.

25 (11) That all or certain of the writings or tangible things
26 designated in the deposition notice not be produced, inspected, or
27 copied.

28 (12) That designated persons, other than the parties to the
29 action and their officers and counsel, be excluded from attending
30 the deposition.

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

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

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

38 (16) That examination of the deponent be terminated. If an
39 order terminates the examination, the deposition shall not
40 thereafter be resumed, except on order of the court.



1 (c) If the motion for a protective order is denied in whole or in
2 part, the court may order that the deponent provide or permit the
3 discovery against which protection was sought on those terms and
4 conditions that are just.

5 (d) The court shall impose a monetary sanction under Chapter
6 7 (commencing with Section 2023.010) against any party, person,
7 or attorney who unsuccessfully makes or opposes a motion for a
8 protective order, unless it finds that the one subject to the sanction
9 acted with substantial justification or that other circumstances
10 make the imposition of the sanction unjust.

11 2025.430. If the party giving notice of a deposition fails to
12 attend or proceed with it, the court shall impose a monetary
13 sanction under Chapter 7 (commencing with Section 2023.010)
14 against that party, or the attorney for that party, or both, and in
15 favor of any party attending in person or by attorney, unless it finds
16 that the one subject to the sanction acted with substantial
17 justification or that other circumstances make the imposition of the
18 sanction unjust.

19 2025.440. (a) If a deponent does not appear for a deposition
20 because the party giving notice of the deposition failed to serve a
21 required deposition subpoena, the court shall impose a monetary
22 sanction under Chapter 7 (commencing with Section 2023.010)
23 against that party, or the attorney for that party, or both, in favor
24 of any other party who, in person or by attorney, attended at the
25 time and place specified in the deposition notice in the expectation
26 that the deponent's testimony would be taken, unless the court
27 finds that the one subject to the sanction acted with substantial
28 justification or that other circumstances make the imposition of the
29 sanction unjust.

30 (b) If a deponent on whom a deposition subpoena has been
31 served fails to attend a deposition or refuses to be sworn as a
32 witness, the court may impose on the deponent the sanctions
33 described in Section 2020.240.

34 2025.450. (a) If, after service of a deposition notice, a party
35 to the action or an officer, director, managing agent, or employee
36 of a party, or a person designated by an organization that is a party
37 under Section 2025.230, without having served a valid objection
38 under Section 2025.410, fails to appear for examination, or to
39 proceed with it, or to produce for inspection any document or
40 tangible thing described in the deposition notice, the party giving

1 the notice may move for an order compelling the deponent's
2 attendance and testimony, and the production for inspection of any
3 document or tangible thing described in the deposition notice.

4 (b) A motion under subdivision (a) shall comply with both of
5 the following:

6 (1) The motion shall set forth specific facts showing good cause
7 justifying the production for inspection of any document or
8 tangible thing described in the deposition notice.

9 (2) The motion shall be accompanied by a meet and confer
10 declaration under Section 2016.040, or, when the deponent fails to
11 attend the deposition and produce the documents or things
12 described in the deposition notice, by a declaration stating that the
13 petitioner has contacted the deponent to inquire about the
14 nonappearance.

15 (c) (1) If a motion under subdivision (a) is granted, the court
16 shall impose a monetary sanction under Chapter 7 (commencing
17 with Section 2023.010) in favor of the party who noticed the
18 deposition and against the deponent or the party with whom the
19 deponent is affiliated, unless the court finds that the one subject to
20 the sanction acted with substantial justification or that other
21 circumstances make the imposition of the sanction unjust.

22 (2) On motion of any other party who, in person or by attorney,
23 attended at the time and place specified in the deposition notice in
24 the expectation that the deponent's testimony would be taken, the
25 court shall impose a monetary sanction under Chapter 7
26 (commencing with Section 2023.010) in favor of that party and
27 against the deponent or the party with whom the deponent is
28 affiliated, unless the court finds that the one subject to the sanction
29 acted with substantial justification or that other circumstances
30 make the imposition of the sanction unjust.

31 (d) If that party or party-affiliated deponent then fails to obey
32 an order compelling attendance, testimony, and production, the
33 court may make those orders that are just, including the imposition
34 of an issue sanction, an evidence sanction, or a terminating
35 sanction under Chapter 7 (commencing with Section 2023.010)
36 against that party deponent or against the party with whom the
37 deponent is affiliated. In lieu of, or in addition to, this sanction, the
38 court may impose a monetary sanction under Chapter 7
39 (commencing with Section 2023.010) against that deponent or
40 against the party with whom that party deponent is affiliated, and

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

4 2025.460. (a) The protection of information from discovery
5 on the ground that it is privileged or that it is a protected work
6 product under Chapter 4 (commencing with Section 2018.010) is
7 waived unless a specific objection to its disclosure is timely made
8 during the deposition.

9 (b) Errors and irregularities of any kind occurring at the oral
10 examination that might be cured if promptly presented are waived
11 unless a specific objection to them is timely made during the
12 deposition. These errors and irregularities include, but are not
13 limited to, those relating to the manner of taking the deposition, to
14 the oath or affirmation administered, to the conduct of a party,
15 attorney, deponent, or deposition officer, or to the form of any
16 question or answer. Unless the objecting party demands that the
17 taking of the deposition be suspended to permit a motion for a
18 protective order under Sections 2025.420 and 2025.470, the
19 deposition shall proceed subject to the objection.

20 (c) Objections to the competency of the deponent, or to the
21 relevancy, materiality, or admissibility at trial of the testimony or
22 of the materials produced are unnecessary and are not waived by
23 failure to make them before or during the deposition.

24 (d) If a deponent fails to answer any question or to produce any
25 document or tangible thing under the deponent's control that is
26 specified in the deposition notice or a deposition subpoena, the
27 party seeking that answer or production may adjourn the
28 deposition or complete the examination on other matters without
29 waiving the right at a later time to move for an order compelling
30 that answer or production under Section 2025.480.

31 2025.470. The deposition officer may not suspend the taking
32 of testimony without the stipulation of all parties present unless
33 any party attending the deposition, including the deponent,
34 demands that the deposition officer suspend taking the testimony
35 to enable that party or deponent to move for a protective order
36 under Section 2025.420 on the ground that the examination is
37 being conducted in bad faith or in a manner that unreasonably
38 annoys, embarrasses, or oppresses that deponent or party.

39 2025.480. (a) If a deponent fails to answer any question or to
40 produce any document or tangible thing under the deponent's

1 control that is specified in the deposition notice or a deposition
2 subpoena, the party seeking discovery may move the court for an
3 order compelling that answer or production.

4 (b) This motion shall be made no later than 60 days after the
5 completion of the record of the deposition, and shall be
6 accompanied by a meet and confer declaration under Section
7 2016.040.

8 (c) Notice of this motion shall be given to all parties, and to the
9 deponent either orally at the examination, or by subsequent service
10 in writing. If the notice of the motion is given orally, the deposition
11 officer shall direct the deponent to attend a session of the court at
12 the time specified in the notice.

13 (d) Not less than five days prior to the hearing on this motion,
14 the moving party shall lodge with the court a certified copy of any
15 parts of the stenographic transcript of the deposition that are
16 relevant to the motion. If a deposition is recorded by audio or video
17 technology, the moving party is required to lodge a certified copy
18 of a transcript of any parts of the deposition that are relevant to the
19 motion.

20 (e) If the court determines that the answer or production sought
21 is subject to discovery, it shall order that the answer be given or the
22 production be made on the resumption of the deposition.

23 (f) The court shall impose a monetary sanction under Chapter
24 7 (commencing with Section 2023.010) against any party, person,
25 or attorney who unsuccessfully makes or opposes a motion to
26 compel answer or production, unless it finds that the one subject
27 to the sanction acted with substantial justification or that other
28 circumstances make the imposition of the sanction unjust.

29 (g) If a deponent fails to obey an order entered under this
30 section, the failure may be considered a contempt of court. In
31 addition, if the disobedient deponent is a party to the action or an
32 officer, director, managing agent, or employee of a party, the court
33 may make those orders that are just against the disobedient party,
34 or against the party with whom the disobedient deponent is
35 affiliated, including the imposition of an issue sanction, an
36 evidence sanction, or a terminating sanction under Chapter 7
37 (commencing with Section 2023.010). In lieu of, or in addition to,
38 this sanction, the court may impose a monetary sanction under
39 Chapter 7 (commencing with Section 2023.010) against that party

1 deponent or against any party with whom the deponent is
2 affiliated.

3
4 Article 5. Transcript or Recording
5

6 2025.510. (a) Unless the parties agree otherwise, the
7 testimony at any deposition recorded by stenographic means shall
8 be transcribed.

9 (b) The party noticing the deposition shall bear the cost of that
10 transcription, unless the court, on motion and for good cause
11 shown, orders that the cost be borne or shared by another party.

12 (c) Notwithstanding subdivision (b) of Section 2025.320, any
13 other party or the deponent, at the expense of that party or
14 deponent, may obtain a copy of the transcript.

15 (d) If the deposition officer receives a request from a party for
16 an original or a copy of the deposition transcript, or any portion
17 thereof, and the full or partial transcript will be available to that
18 party prior to the time the original or copy would be available to
19 any other party, the deposition officer shall immediately notify all
20 other parties attending the deposition of the request, and shall,
21 upon request by any party other than the party making the original
22 request, make that copy of the full or partial deposition transcript
23 available to all parties at the same time.

24 (e) Stenographic notes of depositions shall be retained by the
25 reporter for a period of not less than eight years from the date of
26 the deposition, where no transcript is produced, and not less than
27 one year from the date on which the transcript is produced. Those
28 notes may be either on paper or electronic media, as long as it
29 allows for satisfactory production of a transcript at any time during
30 the periods specified.

31 (f) At the request of any other party to the action, including a
32 party who did not attend the taking of the deposition testimony,
33 any party who records or causes the recording of that testimony by
34 means of audio or video technology shall promptly do both of the
35 following:

36 (1) Permit that other party to hear the audio recording or to
37 view the video recording.

38 (2) Furnish a copy of the audio or video recording to that other
39 party on receipt of payment of the reasonable cost of making that
40 copy of the recording.

1 (g) If the testimony at the deposition is recorded both
2 stenographically, and by audio or video technology, the
3 stenographic transcript is the official record of that testimony for
4 the purpose of the trial and any subsequent hearing or appeal.

5 2025.520. (a) If the deposition testimony is stenographically
6 recorded, the deposition officer shall send written notice to the
7 deponent and to all parties attending the deposition when the
8 original transcript of the testimony for each session of the
9 deposition is available for reading, correcting, and signing, unless
10 the deponent and the attending parties agree on the record that the
11 reading, correcting, and signing of the transcript of the testimony
12 will be waived or that the reading, correcting, and signing of a
13 transcript of the testimony will take place after the entire
14 deposition has been concluded or at some other specific time.

15 (b) For 30 days following each notice under subdivision (a),
16 unless the attending parties and the deponent agree on the record
17 or otherwise in writing to a longer or shorter time period, the
18 deponent may change the form or the substance of the answer to
19 a question, and may either approve the transcript of the deposition
20 by signing it, or refuse to approve the transcript by not signing it.

21 (c) Alternatively, within this same period, the deponent may
22 change the form or the substance of the answer to any question and
23 may approve or refuse to approve the transcript by means of a letter
24 to the deposition officer signed by the deponent which is mailed
25 by certified or registered mail with return receipt requested. A
26 copy of that letter shall be sent by first-class mail to all parties
27 attending the deposition.

28 (d) For good cause shown, the court may shorten the 30-day
29 period for making changes, approving, or refusing to approve the
30 transcript.

31 (e) The deposition officer shall indicate on the original of the
32 transcript, if the deponent has not already done so at the office of
33 the deposition officer, any action taken by the deponent and
34 indicate on the original of the transcript, the deponent's approval
35 of, or failure or refusal to approve, the transcript. The deposition
36 officer shall also notify in writing the parties attending the
37 deposition of any changes which the deponent timely made in
38 person.

39 (f) If the deponent fails or refuses to approve the transcript
40 within the allotted period, the deposition shall be given the same

1 effect as though it had been approved, subject to any changes
2 timely made by the deponent.

3 (g) Notwithstanding subdivision (f), on a seasonable motion to
4 suppress the deposition, accompanied by a meet and confer
5 declaration under Section 2016.040, the court may determine that
6 the reasons given for the failure or refusal to approve the transcript
7 require rejection of the deposition in whole or in part.

8 (h) The court shall impose a monetary sanction under Chapter
9 7 (commencing with Section 2023.010) against any party, person,
10 or attorney who unsuccessfully makes or opposes a motion to
11 suppress a deposition under this section, unless the court finds that
12 the one subject to the sanction acted with substantial justification
13 or that other circumstances make the imposition of the sanction
14 unjust.

15 2025.530. (a) If there is no stenographic transcription of the
16 deposition, the deposition officer shall send written notice to the
17 deponent and to all parties attending the deposition that the audio
18 or video recording made by, or at the direction of, any party, is
19 available for review, unless the deponent and all these parties agree
20 on the record to waive the hearing or viewing of the audio or video
21 recording of the testimony.

22 (b) For 30 days following a notice under subdivision (a), the
23 deponent, either in person or by signed letter to the deposition
24 officer, may change the substance of the answer to any question.

25 (c) The deposition officer shall set forth in a writing to
26 accompany the recording any changes made by the deponent, as
27 well as either the deponent's signature identifying the deposition
28 as the deponent's own, or a statement of the deponent's failure to
29 supply the signature, or to contact the officer within the period
30 prescribed by subdivision (b).

31 (d) When a deponent fails to contact the officer within the
32 period prescribed by subdivision (b), or expressly refuses by a
33 signature to identify the deposition as the deponent's own, the
34 deposition shall be given the same effect as though signed.

35 (e) Notwithstanding subdivision (d), on a reasonable motion to
36 suppress the deposition, accompanied by a meet and confer
37 declaration under Section 2016.040, the court may determine that
38 the reasons given for the refusal to sign require rejection of the
39 deposition in whole or in part.



(f) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition under this section, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

2025.540. (a) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audio or video record of deposition testimony, as described in Section 2025.530, that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

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

2025.550. (a) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: “Deposition of (here insert name of deponent),” and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

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

2025.560. (a) An audio or video record of deposition testimony made by, or at the direction of, any party, including a certified tape made by an operator qualified under subdivisions (b) to (f), inclusive, of Section 2025.340, shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the

1 quality of the recording and the integrity of the testimony and
2 images it contains.

3 (b) At the request of any party to the action, including a party
4 who did not attend the taking of the deposition testimony, or at the
5 request of the deponent, that operator shall promptly do both of the
6 following:

7 (1) Permit the one making the request to hear or to view the
8 recording on receipt of payment of a reasonable charge for
9 providing the facilities for hearing or viewing the recording.

10 (2) Furnish a copy of the audio or video recording to the one
11 making the request on receipt of payment of the reasonable cost of
12 making that copy of the recording.

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

20 2025.570. (a) Notwithstanding subdivision (b) of Section
21 2025.320, unless the court issues an order to the contrary, a copy
22 of the transcript of the deposition testimony made by, or at the
23 direction of, any party, or an audio or video recording of the
24 deposition testimony, if still in the possession of the deposition
25 officer, shall be made available by the deposition officer to any
26 person requesting a copy, on payment of a reasonable charge set
27 by the deposition officer.

28 (b) If a copy is requested from the deposition officer, the
29 deposition officer shall mail a notice to all parties attending the
30 deposition and to the deponent at the deponent's last known
31 address advising them of all of the following:

32 (1) The copy is being sought.

33 (2) The name of the person requesting the copy.

34 (3) The right to seek a protective order under Section 2025.420.

35 (c) If a protective order is not served on the deposition officer
36 within 30 days of the mailing of the notice, the deposition officer
37 shall make the copy available to the person requesting the copy.

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

40

Article 6. Post-Deposition Procedures

2025.610. (a) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to Section 2025.240 may take a subsequent deposition of that deponent.

(b) Notwithstanding subdivision (a), for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken.

(c) This section does not preclude taking one subsequent deposition of a natural person who has previously been examined under either or both of the following circumstances:

(1) The person was examined as a result of that person's designation to testify on behalf of an organization under Section 2025.230.

(2) The person was examined pursuant to a court order under Section 485.230, for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest.

(d) This section does not authorize the taking of more than one subsequent deposition for the limited purpose of Section 485.230.

2025.620. At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under Section 2025.410, so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

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

(b) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under Section 2025.230 of a party. It is not ground for objection to the use of a deposition of a party under this

1 subdivision by an adverse party that the deponent is available to
2 testify, has testified, or will testify at the trial or other hearing.

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

6 (1) The deponent resides more than 150 miles from the place
7 of the trial or other hearing.

8 (2) The deponent, without the procurement or wrongdoing of
9 the proponent of the deposition for the purpose of preventing
10 testimony in open court, is any of the following:

11 (A) Exempted or precluded on the ground of privilege from
12 testifying concerning the matter to which the deponent's testimony
13 is relevant.

14 (B) Disqualified from testifying.

15 (C) Dead or unable to attend or testify because of existing
16 physical or mental illness or infirmity.

17 (D) Absent from the trial or other hearing and the court is
18 unable to compel the deponent's attendance by its process.

19 (E) Absent from the trial or other hearing and the proponent of
20 the deposition has exercised reasonable diligence but has been
21 unable to procure the deponent's attendance by the court's process.

22 (3) Exceptional circumstances exist that make it desirable to
23 allow the use of any deposition in the interests of justice and with
24 due regard to the importance of presenting the testimony of
25 witnesses orally in open court.

26 (d) Any party may use a video recording of the deposition
27 testimony of a treating or consulting physician or of any expert
28 witness even though the deponent is available to testify if the
29 deposition notice under Section 2025.220 reserved the right to use
30 the deposition at trial, and if that party has complied with
31 subdivision (m) of Section 2025.340.

32 (e) Subject to the requirements of this chapter, a party may offer
33 in evidence all or any part of a deposition, and if the party
34 introduces only part of the deposition, any other party may
35 introduce any other parts that are relevant to the parts introduced.

36 (f) Substitution of parties does not affect the right to use
37 depositions previously taken.

38 (g) When an action has been brought in any court of the United
39 States or of any state, and another action involving the same
40 subject matter is subsequently brought between the same parties

1 or their representatives or successors in interest, all depositions
2 lawfully taken and duly filed in the initial action may be used in
3 the subsequent action as if originally taken in that subsequent
4 action. A deposition previously taken may also be used as
5 permitted by the Evidence Code.

6
7 CHAPTER 10. ORAL DEPOSITION OUTSIDE CALIFORNIA
8

9 2026.010. (a) Any party may obtain discovery by taking an
10 oral deposition, as described in Section 2025.010, in another state
11 of the United States, or in a territory or an insular possession
12 subject to its jurisdiction. Except as modified in this section, the
13 procedures for taking oral depositions in California set forth in
14 Chapter 9 (commencing with Section 2025.010) apply to an oral
15 deposition taken in another state of the United States, or in a
16 territory or an insular possession subject to its jurisdiction.

17 (b) If a deponent is a party to the action or an officer, director,
18 managing agent, or employee of a party, the service of the
19 deposition notice is effective to compel that deponent to attend and
20 to testify, as well as to produce any document or tangible thing for
21 inspection and copying. The deposition notice shall specify a place
22 in the state, territory, or insular possession of the United States that
23 is within 75 miles of the residence or a business office of a
24 deponent.

25 (c) If the deponent is not a party to the action or an officer,
26 director, managing agent, or employee of a party, a party serving
27 a deposition notice under this section shall use any process and
28 procedures required and available under the laws of the state,
29 territory, or insular possession where the deposition is to be taken
30 to compel the deponent to attend and to testify, as well as to
31 produce any document or tangible thing for inspection, copying,
32 and any related activity.

33 (d) A deposition taken under this section shall be conducted in
34 either of the following ways:

35 (1) Under the supervision of a person who is authorized to
36 administer oaths by the laws of the United States or those of the
37 place where the examination is to be held, and who is not otherwise
38 disqualified under Section 2025.320 and subdivisions (b) to (f),
39 inclusive, of Section 2025.340.

40 (2) Before a person appointed by the court.

1 (e) An appointment under subdivision (d) is effective to
2 authorize that person to administer oaths and to take testimony.

3 (f) On request, the clerk of the court shall issue a commission
4 authorizing the deposition in another state or place. The
5 commission shall request that process issue in the place where the
6 examination is to be held, requiring attendance and enforcing the
7 obligations of the deponents to produce documents and answer
8 questions. The commission shall be issued by the clerk to any party
9 in any action pending in its venue without a noticed motion or
10 court order. The commission may contain terms that are required
11 by the foreign jurisdiction to initiate the process. If a court order
12 is required by the foreign jurisdiction, an order for a commission
13 may be obtained by ex parte application.

14 2027.010. (a) Any party may obtain discovery by taking an
15 oral deposition, as described in Section 2025.010, in a foreign
16 nation. Except as modified in this section, the procedures for
17 taking oral depositions in California set forth in Chapter 9
18 (commencing with Section 2025.010) apply to an oral deposition
19 taken in a foreign nation.

20 (b) If a deponent is a party to the action or an officer, director,
21 managing agent, or employee of a party, the service of the
22 deposition notice is effective to compel the deponent to attend and
23 to testify, as well as to produce any document or tangible thing for
24 inspection and copying.

25 (c) If a deponent is not a party to the action or an officer,
26 director, managing agent or employee of a party, a party serving
27 a deposition notice under this section shall use any process and
28 procedures required and available under the laws of the foreign
29 nation where the deposition is to be taken to compel the deponent
30 to attend and to testify, as well as to produce any document or
31 tangible thing for inspection, copying, and any related activity.

32 (d) A deposition taken under this section shall be conducted
33 under the supervision of any of the following:

34 (1) A person who is authorized to administer oaths or their
35 equivalent by the laws of the United States or of the foreign nation,
36 and who is not otherwise disqualified under Section 2025.320 and
37 subdivisions (b) to (f), inclusive, of Section 2025.340.

38 (2) A person or officer appointed by commission or under
39 letters rogatory.

40 (3) Any person agreed to by all the parties.

(e) On motion of the party seeking to take an oral deposition in a foreign nation, the court in which the action is pending shall issue a commission, letters rogatory, or a letter of request, if it determines that one is necessary or convenient. The commission, letters rogatory, or letter of request may include any terms and directions that are just and appropriate. The deposition officer may be designated by name or by descriptive title in the deposition notice and in the commission. Letters rogatory or a letter of request may be addressed: “To the Appropriate Judicial Authority in [name of foreign nation].”

CHAPTER 11. DEPOSITION BY WRITTEN QUESTIONS

2028.010. Any party may obtain discovery by taking a deposition by written questions instead of by oral examination. Except as modified in this chapter, the procedures for taking oral depositions set forth in Chapters 9 (commencing with Section 2025.010) and 10 (commencing with Section 2026.010) apply to written depositions.

2028.020. The notice of a written deposition shall comply with Sections 2025.220 and 2025.230, and with subdivision (c) of Section 2020.240, except as follows:

(a) The name or descriptive title, as well as the address, of the deposition officer shall be stated.

(b) The date, time, and place for commencement of the deposition may be left to future determination by the deposition officer.

2028.030. (a) The questions to be propounded to the deponent by direct examination shall accompany the notice of a written deposition.

(b) Within 30 days after the deposition notice and questions are served, a party shall serve any cross questions on all other parties entitled to notice of the deposition.

(c) Within 15 days after being served with cross questions, a party shall serve any redirect questions on all other parties entitled to notice of the deposition.

(d) Within 15 days after being served with redirect questions, a party shall serve any recross questions on all other parties entitled to notice of the deposition.

1 (e) The court may, for good cause shown, extend or shorten the
2 time periods for the interchange of cross, redirect, and recross
3 questions.

4 2028.040. (a) A party who objects to the form of any question
5 shall serve a specific objection to that question on all parties
6 entitled to notice of the deposition within 15 days after service of
7 the question. A party who fails to timely serve an objection to the
8 form of a question waives it.

9 (b) The objecting party shall promptly move the court to
10 sustain the objection. This motion shall be accompanied by a meet
11 and confer declaration under Section 2016.040. Unless the court
12 has sustained that objection, the deposition officer shall propound
13 to the deponent that question subject to that objection as to its form.

14 (c) The court shall impose a monetary sanction under Chapter
15 7 (commencing with Section 2023.010) against any party, person,
16 or attorney who unsuccessfully makes or opposes a motion to
17 sustain an objection, unless it finds that the one subject to the
18 sanction acted with substantial justification or that other
19 circumstances make the imposition of the sanction unjust.

20 2028.050. (a) A party who objects to any question on the
21 ground that it calls for information that is privileged or is protected
22 work product under Chapter 4 (commencing with Section
23 2018.010) shall serve a specific objection to that question on all
24 parties entitled to notice of the deposition within 15 days after
25 service of the question. A party who fails to timely serve that
26 objection waives it.

27 (b) The party propounding any question to which an objection
28 is made on those grounds may then move the court for an order
29 overruling that objection. This motion shall be accompanied by a
30 meet and confer declaration under Section 2016.040. The
31 deposition officer shall not propound to the deponent any question
32 to which a written objection on those grounds has been served
33 unless the court has overruled that objection.

34 (c) The court shall impose a monetary sanction under Chapter
35 7 (commencing with Section 2023.010) against any party, person,
36 or attorney who unsuccessfully makes or opposes a motion to
37 overrule an objection, unless it finds that the one subject to the
38 sanction acted with substantial justification or that other
39 circumstances make the imposition of the sanction unjust.



1 2028.060. (a) The party taking a written deposition may
2 forward to the deponent a copy of the questions on direct
3 examination for study prior to the deposition.

4 (b) No party or attorney shall permit the deponent to preview
5 the form or the substance of any cross, redirect, or recross
6 questions.

7 2028.070. In addition to any appropriate order listed in
8 Section 2025.420, the court may order any of the following:

9 (a) That the deponent's testimony be taken by oral, instead of
10 written, examination.

11 (b) That one or more of the parties receiving notice of the
12 written deposition be permitted to attend in person or by attorney
13 and to propound questions to the deponent by oral examination.

14 (c) That objections under Sections 2028.040 and 2028.050 be
15 sustained or overruled.

16 (d) That the deposition be taken before an officer other than the
17 one named or described in the deposition notice.

18 2028.080. The party taking a written deposition shall deliver
19 to the officer designated in the deposition notice a copy of that
20 notice and of all questions served under Section 2028.030. The
21 deposition officer shall proceed promptly to propound the
22 questions and to take and record the testimony of the deponent in
23 response to the questions.

24
25 CHAPTER 12. DEPOSITION IN DEPOSITION IN ACTION PENDING
26 OUTSIDE CALIFORNIA
27

28 2029.010. Whenever any mandate, writ, letters rogatory,
29 letter of request, or commission is issued out of any court of record
30 in any other state, territory, or district of the United States, or in a
31 foreign nation, or whenever, on notice or agreement, it is required
32 to take the oral or written deposition of a natural person in
33 California, the deponent may be compelled to appear and testify,
34 and to produce documents and things, in the same manner, and by
35 the same process as may be employed for the purpose of taking
36 testimony in actions pending in California.
37

CHAPTER 13. WRITTEN INTERROGATORIES

Article 1. Propounding Interrogatories

2030.010. (a) Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by propounding to any other party to the action written interrogatories to be answered under oath.

(b) An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial.

2030.020. (a) A defendant may propound interrogatories to a party to the action without leave of court at any time.

(b) A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

2030.030. (a) A party may propound to another party either or both of the following:

(1) 35 specially prepared interrogatories that are relevant to the subject matter of the pending action.

(2) Any additional number of official form interrogatories, as described in Chapter 17 (commencing with Section 2033.710), that are relevant to the subject matter of the pending action.

(b) Except as provided in Section 2030.070, no party shall, as a matter of right, propound to any other party more than 35 specially prepared interrogatories. If the initial set of interrogatories does not exhaust this limit, the balance may be propounded in subsequent sets.

(c) Unless a declaration as described in Section 2030.050 has been made, a party need only respond to the first 35 specially prepared interrogatories served, if that party states an objection to the balance, under Section 2030.240, on the ground that the limit has been exceeded.

2030.040. (a) Subject to the right of the responding party to seek a protective order under Section 2030.090, any party who attaches a supporting declaration as described in Section 2030.050 may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(1) The complexity or the quantity of the existing and potential issues in the particular case.

(2) The financial burden on a party entailed in conducting the discovery by oral deposition.

(3) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

(b) If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

2030.050. Any party who is propounding or has propounded more than 35 specially prepared interrogatories to any other party shall attach to each set of those interrogatories a declaration containing substantially the following:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for _____, a party to this action or proceeding).

2. I am propounding to _____ the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared

1 interrogatories permitted by Section 2030.30 of the Code of Civil
2 Procedure.

3 4. I have previously propounded a total of _____
4 interrogatories to this party, of which _____ interrogatories
5 were not official form interrogatories.

6 5. This set of interrogatories contains a total of _____
7 specially prepared interrogatories.

8 6. I am familiar with the issues and the previous discovery
9 conducted by all of the parties in the case.

10 7. I have personally examined each of the questions in this set of
11 interrogatories.

12 8. This number of questions is warranted under Section 2030.040
13 of the Code of Civil Procedure because _____. (Here state
14 each factor described in Section 2030.040 that is relied on, as well
15 as the reasons why any factor relied on is applicable to the instant
16 lawsuit.)

17 9. None of the questions in this set of interrogatories is being
18 propounded for any improper purpose, such as to harass the party,
19 or the attorney for the party, to whom it is directed, or to cause
20 unnecessary delay or needless increase in the cost of litigation.

21 I declare under penalty of perjury under the laws of California that
22 the foregoing is true and correct, and that this declaration was
23 executed on _____.

24

25

26

(Signature)

27

28

Attorney for _____

29

30 2030.060. (a) A party propounding interrogatories shall
31 number each set of interrogatories consecutively.

32 (b) In the first paragraph immediately below the title of the
33 case, there shall appear the identity of the propounding party, the
34 set number, and the identity of the responding party.

35 (c) Each interrogatory in a set shall be separately set forth and
36 identified by number or letter.

37 (d) Each interrogatory shall be full and complete in and of
38 itself. No preface or instruction shall be included with a set of
39 interrogatories unless it has been approved under Chapter 17
40 (commencing with Section 2033.710).



1 (e) Any term specially defined in a set of interrogatories shall
2 be typed with all letters capitalized wherever that term appears.

3 (f) No specially prepared interrogatory shall contain subparts,
4 or a compound, conjunctive, or disjunctive question.

5 (g) An interrogatory may not be made a continuing one so as
6 to impose on the party responding to it a duty to supplement an
7 answer to it that was initially correct and complete with later
8 acquired information.

9 2030.070. (a) In addition to the number of interrogatories
10 permitted by Sections 2030.030 and 2030.040, a party may
11 propound a supplemental interrogatory to elicit any later acquired
12 information bearing on all answers previously made by any party
13 in response to interrogatories.

14 (b) A party may propound a supplemental interrogatory twice
15 before the initial setting of a trial date, and, subject to the time
16 limits on discovery proceedings and motions provided in Chapter
17 8 (commencing with Section 2024.010), once after the initial
18 setting of a trial date.

19 (c) Notwithstanding subdivisions (a) and (b), on motion, for
20 good cause shown, the court may grant leave to a party to propound
21 an additional number of supplemental interrogatories.

22 2030.080. (a) The party propounding interrogatories shall
23 serve a copy of them on the party to whom the interrogatories are
24 directed.

25 (b) The propounding party shall also serve a copy of the
26 interrogatories on all other parties who have appeared in the
27 action. On motion, with or without notice, the court may relieve
28 the party from this requirement on its determination that service
29 on all other parties would be unduly expensive or burdensome.

30 2030.090. (a) When interrogatories have been propounded,
31 the responding party, and any other party or affected natural person
32 or organization may promptly move for a protective order. This
33 motion shall be accompanied by a meet and confer declaration
34 under Section 2016.040.

35 (b) The court, for good cause shown, may make any order that
36 justice requires to protect any party or other natural person or
37 organization from unwarranted annoyance, embarrassment, or
38 oppression, or undue burden and expense. This protective order
39 may include, but is not limited to, one or more of the following
40 directions:

1 (1) That the set of interrogatories, or particular interrogatories
2 in the set, need not be answered.

3 (2) That, contrary to the representations made in a declaration
4 submitted under Section 2030.050, the number of specially
5 prepared interrogatories is unwarranted.

6 (3) That the time specified in Section 2030.260 to respond to
7 the set of interrogatories, or to particular interrogatories in the set,
8 be extended.

9 (4) That the response be made only on specified terms and
10 conditions.

11 (5) That the method of discovery be an oral deposition instead
12 of interrogatories to a party.

13 (6) That a trade secret or other confidential research,
14 development, or commercial information not be disclosed or be
15 disclosed only in a certain way.

16 (7) That some or all of the answers to interrogatories be sealed
17 and thereafter opened only on order of the court.

18 (c) If the motion for a protective order is denied in whole or in
19 part, the court may order that the party provide or permit the
20 discovery against which protection was sought on terms and
21 conditions that are just.

22 (d) The court shall impose a monetary sanction under Chapter
23 7 (commencing with Section 2023.010) against any party, person,
24 or attorney who unsuccessfully makes or opposes a motion for a
25 protective order under this section, unless it finds that the one
26 subject to the sanction acted with substantial justification or that
27 other circumstances make the imposition of the sanction unjust.

28 29 Article 2. Response to Interrogatories 30

31 2030.210. (a) The party to whom interrogatories have been
32 propounded shall respond in writing under oath separately to each
33 interrogatory by any of the following:

34 (1) An answer containing the information sought to be
35 discovered.

36 (2) An exercise of the party's option to produce writings.

37 (3) An objection to the particular interrogatory.

38 (b) In the first paragraph of the response immediately below the
39 title of the case, there shall appear the identity of the responding
40 party, the set number, and the identity of the propounding party.

1 (c) Each answer, exercise of option, or objection in the
2 response shall bear the same identifying number or letter and be
3 in the same sequence as the corresponding interrogatory, but the
4 text of that interrogatory need not be repeated.

5 2030.220. (a) Each answer in a response to interrogatories
6 shall be as complete and straightforward as the information
7 reasonably available to the responding party permits.

8 (b) If an interrogatory cannot be answered completely, it shall
9 be answered to the extent possible.

10 (c) If the responding party does not have personal knowledge
11 sufficient to respond fully to an interrogatory, that party shall so
12 state, but shall make a reasonable and good faith effort to obtain
13 the information by inquiry to other natural persons or
14 organizations, except where the information is equally available to
15 the propounding party.

16 2030.230. If the answer to an interrogatory would necessitate
17 the preparation or the making of a compilation, abstract, audit, or
18 summary of or from the documents of the party to whom the
19 interrogatory is directed, and if the burden or expense of preparing
20 or making it would be substantially the same for the party
21 propounding the interrogatory as for the responding party, it is a
22 sufficient answer to that interrogatory to refer to this section and
23 to specify the writings from which the answer may be derived or
24 ascertained. This specification shall be in sufficient detail to
25 permit the propounding party to locate and to identify, as readily
26 as the responding party can, the documents from which the answer
27 may be ascertained. The responding party shall then afford to the
28 propounding party a reasonable opportunity to examine, audit, or
29 inspect these documents and to make copies, compilations,
30 abstracts, or summaries of them.

31 2030.240. (a) If only a part of an interrogatory is
32 objectionable, the remainder of the interrogatory shall be
33 answered.

34 (b) If an objection is made to an interrogatory or to a part of an
35 interrogatory, the specific ground for the objection shall be set
36 forth clearly in the response. If an objection is based on a claim of
37 privilege, the particular privilege invoked shall be clearly stated.
38 If an objection is based on a claim that the information sought is
39 protected work product under Chapter 4 (commencing with
40 Section 2018.010), that claim shall be expressly asserted.

1 2030.250. (a) The party to whom the interrogatories are
2 directed shall sign the response under oath unless the response
3 contains only objections.

4 (b) If that party is a public or private corporation, or a
5 partnership, association, or governmental agency, one of its
6 officers or agents shall sign the response under oath on behalf of
7 that party. If the officer or agent signing the response on behalf of
8 that party is an attorney acting in that capacity for the party, that
9 party waives any lawyer-client privilege and any protection for
10 work product under Chapter 4 (commencing with Section
11 2018.010) during any subsequent discovery from that attorney
12 concerning the identity of the sources of the information contained
13 in the response.

14 (c) The attorney for the responding party shall sign any
15 responses that contain an objection.

16 2030.260. (a) Within 30 days after service of interrogatories,
17 or in unlawful detainer actions within five days after service of
18 interrogatories the party to whom the interrogatories are
19 propounded shall serve the original of the response to them on the
20 propounding party, unless on motion of the propounding party the
21 court has shortened the time for response, or unless on motion of
22 the responding party the court has extended the time for response.
23 In unlawful detainer actions, the party to whom the interrogatories
24 are propounded shall have five days from the date of service to
25 respond unless on motion of the propounding party the court has
26 shortened the time for response.

27 (b) The party to whom the interrogatories are propounded shall
28 also serve a copy of the response on all other parties who have
29 appeared in the action. On motion, with or without notice, the court
30 may relieve the party from this requirement on its determination
31 that service on all other parties would be unduly expensive or
32 burdensome.

33 2030.270. (a) The party propounding interrogatories and the
34 responding party may agree to extend the time for service of a
35 response to a set of interrogatories, or to particular interrogatories
36 in a set, to a date beyond that provided in Section 2030.260.

37 (b) This agreement may be informal, but it shall be confirmed
38 in a writing that specifies the extended date for service of a
39 response.

1 (c) Unless this agreement expressly states otherwise, it is
2 effective to preserve to the responding party the right to respond
3 to any interrogatory to which the agreement applies in any manner
4 specified in Sections 2030.210, 2030.220, 2030.230, and
5 2030.240.

6 2030.280. (a) The interrogatories and the response thereto
7 shall not be filed with the court.

8 (b) The propounding party shall retain both the original of the
9 interrogatories, with the original proof of service affixed to them,
10 and the original of the sworn response until six months after final
11 disposition of the action. At that time, both originals may be
12 destroyed, unless the court on motion of any party and for good
13 cause shown orders that the originals be preserved for a longer
14 period.

15 2030.290. If a party to whom interrogatories are directed fails
16 to serve a timely response, the following rules apply:

17 (a) The party to whom the interrogatories are directed waives
18 any right to exercise the option to produce writings under Section
19 2030.230, as well as any objection to the interrogatories, including
20 one based on privilege or on the protection for work product under
21 Chapter 4 (commencing with Section 2018.010). The court, on
22 motion, may relieve that party from this waiver on its
23 determination that both of the following conditions are satisfied:

24 (1) The party has subsequently served a response that is in
25 substantial compliance with Sections 2030.210, 2030.220,
26 2030.230, and 2030.240.

27 (2) The party's failure to serve a timely response was the result
28 of mistake, inadvertence, or excusable neglect.

29 (b) The party propounding the interrogatories may move for an
30 order compelling response to the interrogatories.

31 (c) The court shall impose a monetary sanction under Chapter
32 7 (commencing with Section 2023.010) against any party, person,
33 or attorney who unsuccessfully makes or opposes a motion to
34 compel a response to interrogatories, unless it finds that the one
35 subject to the sanction acted with substantial justification or that
36 other circumstances make the imposition of the sanction unjust. If
37 a party then fails to obey an order compelling answers, the court
38 may make those orders that are just, including the imposition of an
39 issue sanction, an evidence sanction, or a terminating sanction
40 under Chapter 7 (commencing with Section 2023.010). In lieu of

1 or in addition to that sanction, the court may impose a monetary
2 sanction under Chapter 7 (commencing with Section 2023.010).

3 2030.300. (a) On receipt of a response to interrogatories, the
4 propounding party may move for an order compelling a further
5 response if the propounding party deems that any of the following
6 apply:

7 (1) An answer to a particular interrogatory is evasive or
8 incomplete.

9 (2) An exercise of the option to produce documents under
10 Section 2030.230 is unwarranted or the required specification of
11 those documents is inadequate.

12 (3) An objection to an interrogatory is without merit or too
13 general.

14 (b) A motion under subdivision (a) shall be accompanied by a
15 meet and confer declaration under Section 2016.040.

16 (c) Unless notice of this motion is given within 45 days of the
17 service of the response, or any supplemental response, or on or
18 before any specific later date to which the propounding party and
19 the responding party have agreed in writing, the propounding
20 party waives any right to compel a further response to the
21 interrogatories.

22 (d) The court shall impose a monetary sanction under Chapter
23 7 (commencing with Section 2023.010) against any party, person,
24 or attorney who unsuccessfully makes or opposes a motion to
25 compel a further response to interrogatories, unless it finds that the
26 one subject to the sanction acted with substantial justification or
27 that other circumstances make the imposition of the sanction
28 unjust.

29 (e) If a party then fails to obey an order compelling further
30 response to interrogatories, the court may make those orders that
31 are just, including the imposition of an issue sanction, an evidence
32 sanction, or a terminating sanction under Chapter 7 (commencing
33 with Section 2023.010). In lieu of or in addition to that sanction,
34 the court may impose a monetary sanction under Chapter 7
35 (commencing with Section 2023.010).

36 2030.310. (a) Without leave of court, a party may serve an
37 amended answer to any interrogatory that contains information
38 subsequently discovered, inadvertently omitted, or mistakenly
39 stated in the initial interrogatory. At the trial of the action, the
40 propounding party or any other party may use the initial answer

under Section 2030.410, and the responding party may then use the amended answer.

(b) The party who propounded an interrogatory to which an amended answer has been served may move for an order that the initial answer to that interrogatory be deemed binding on the responding party for the purpose of the pending action. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(c) The court shall grant a motion under subdivision (b) if it determines that all of the following conditions are satisfied:

(1) The initial failure of the responding party to answer the interrogatory correctly has substantially prejudiced the party who propounded the interrogatory.

(2) The responding party has failed to show substantial justification for the initial answer to that interrogatory.

(3) The prejudice to the propounding party cannot be cured either by a continuance to permit further discovery or by the use of the initial answer under Section 2030.410.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to deem binding an initial answer to an interrogatory, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Article 3. Use of Interrogatory Answer

2030.410. At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party. It is not ground for objection to the use of an answer to an interrogatory that the responding party is available to testify, has testified, or will testify at the trial or other hearing.

1 CHAPTER 14. INSPECTION AND PRODUCTION OF DOCUMENTS,
2 TANGIBLE THINGS, LAND, AND OTHER PROPERTY
3
4

5 Article 1. Inspection Demand
6

7 2031.010. (a) Any party may obtain discovery within the
8 scope delimited by Chapters 2 (commencing with Section
9 2017.010) and 3 (commencing with Section 2017.710), and
10 subject to the restrictions set forth in Chapter 5 (commencing with
11 Section 2019.010), by inspecting documents, tangible things, and
12 land or other property that are in the possession, custody, or control
13 of any other party to the action.

14 (b) A party may demand that any other party produce and
15 permit the party making the demand, or someone acting on that
16 party's behalf, to inspect and to copy a document that is in the
17 possession, custody, or control of the party on whom the demand
18 is made.

19 (c) A party may demand that any other party produce and
20 permit the party making the demand, or someone acting on that
21 party's behalf, to inspect and to photograph, test, or sample any
22 tangible things that are in the possession, custody, or control of the
23 party on whom the demand is made.

24 (d) A party may demand that any other party allow the party
25 making the demand, or someone acting on that party's behalf, to
26 enter on any land or other property that is in the possession,
27 custody, or control of the party on whom the demand is made, and
28 to inspect and to measure, survey, photograph, test, or sample the
29 land or other property, or any designated object or operation on it.

30 2031.020. (a) A defendant may make a demand for
31 inspection without leave of court at any time.

32 (b) A plaintiff may make a demand for inspection without leave
33 of court at any time that is 10 days after the service of the summons
34 on, or in unlawful detainer actions within five days after service
35 of the summons on or appearance by, the party to whom the
36 demand is directed, whichever occurs first.

37 (c) Notwithstanding subdivision (b), on motion with or without
38 notice, the court, for good cause shown, may grant leave to a
39 plaintiff to make an inspection demand at an earlier time.

1 2031.030. (a) A party demanding an inspection shall number
2 each set of demands consecutively.

3 (b) In the first paragraph immediately below the title of the
4 case, there shall appear the identity of the demanding party, the set
5 number, and the identity of the responding party.

6 (c) Each demand in a set shall be separately set forth, identified
7 by number or letter, and shall do all of the following:

8 (1) Designate the documents, tangible things, or land or other
9 property to be inspected either by specifically describing each
10 individual item or by reasonably particularizing each category of
11 item.

12 (2) Specify a reasonable time for the inspection that is at least
13 30 days after service of the demand, or in unlawful detainer actions
14 at least five days after service of the demand, unless the court for
15 good cause shown has granted leave to specify an earlier date.

16 (3) Specify a reasonable place for making the inspection,
17 copying, and performing any related activity.

18 (4) Specify any related activity that is being demanded in
19 addition to an inspection and copying, as well as the manner in
20 which that related activity will be performed, and whether that
21 activity will permanently alter or destroy the item involved.

22 2031.040. The party demanding an inspection shall serve a
23 copy of the inspection demand on the party to whom it is directed
24 and on all other parties who have appeared in the action.

25 2031.050. (a) In addition to the inspection demands
26 permitted by this chapter, a party may propound a supplemental
27 demand to inspect any later acquired or discovered documents,
28 tangible things, or land or other property that are in the possession,
29 custody, or control of the party on whom the demand is made.

30 (b) A party may propound a supplemental inspection demand
31 twice before the initial setting of a trial date, and, subject to the
32 time limits on discovery proceedings and motions provided in
33 Chapter 8 (commencing with Section 2024.010), once after the
34 initial setting of a trial date.

35 (c) Notwithstanding subdivisions (a) and (b), on motion, for
36 good cause shown, the court may grant leave to a party to propound
37 an additional number of supplemental demands for inspection.

38 2031.060. (a) When an inspection of documents, tangible
39 things or places has been demanded, the party to whom the demand
40 has been directed, and any other party or affected person or

1 organization, may promptly move for a protective order. This
2 motion shall be accompanied by a meet and confer declaration
3 under Section 2016.040.

4 (b) The court, for good cause shown, may make any order that
5 justice requires to protect any party or other natural person or
6 organization from unwarranted annoyance, embarrassment, or
7 oppression, or undue burden and expense. This protective order
8 may include, but is not limited to, one or more of the following
9 directions:

10 (1) That all or some of the items or categories of items in the
11 inspection demand need not be produced or made available at all.

12 (2) That the time specified in Section 2030.260 to respond to
13 the set of inspection demands, or to a particular item or category
14 in the set, be extended.

15 (3) That the place of production be other than that specified in
16 the inspection demand.

17 (4) That the inspection be made only on specified terms and
18 conditions.

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

22 (6) That the items produced be sealed and thereafter opened
23 only on order of the court.

24 (c) If the motion for a protective order is denied in whole or in
25 part, the court may order that the party to whom the demand was
26 directed provide or permit the discovery against which protection
27 was sought on terms and conditions that are just.

28 (d) The court shall impose a monetary sanction under Chapter
29 7 (commencing with Section 2023.010) against any party, person,
30 or attorney who unsuccessfully makes or opposes a motion for a
31 protective order, unless it finds that the one subject to the sanction
32 acted with substantial justification or that other circumstances
33 make the imposition of the sanction unjust.

34 Article 2. Response to Inspection Demand

35
36
37 2031.210. (a) The party to whom an inspection demand has
38 been directed shall respond separately to each item or category of
39 item by any of the following:



1 (1) A statement that the party will comply with the particular
2 demand for inspection and any related activities.

3 (2) A representation that the party lacks the ability to comply
4 with the demand for inspection of a particular item or category of
5 item.

6 (3) An objection to the particular demand.

7 (b) In the first paragraph of the response immediately below the
8 title of the case, there shall appear the identity of the responding
9 party, the set number, and the identity of the demanding party.

10 (c) Each statement of compliance, each representation, and
11 each objection in the response shall bear the same number and be
12 in the same sequence as the corresponding item or category in the
13 demand, but the text of that item or category need not be repeated.

14 2031.220. A statement that the party to whom an inspection
15 demand has been directed will comply with the particular demand
16 shall state that the production, inspection, and related activity
17 demanded will be allowed either in whole or in part, and that all
18 documents or things in the demanded category that are in the
19 possession, custody, or control of that party and to which no
20 objection is being made will be included in the production.

21 2031.230. A representation of inability to comply with the
22 particular demand for inspection shall affirm that a diligent search
23 and a reasonable inquiry has been made in an effort to comply with
24 that demand. This statement shall also specify whether the
25 inability to comply is because the particular item or category has
26 never existed, has been destroyed, has been lost, misplaced, or
27 stolen, or has never been, or is no longer, in the possession,
28 custody, or control of the responding party. The statement shall set
29 forth the name and address of any natural person or organization
30 known or believed by that party to have possession, custody, or
31 control of that item or category of item.

32 2031.240. (a) If only part of an item or category of item in an
33 inspection demand is objectionable, the response shall contain a
34 statement of compliance, or a representation of inability to comply
35 with respect to the remainder of that item or category.

36 (b) If the responding party objects to the demand for inspection
37 of an item or category of item, the response shall do both of the
38 following:

(1) Identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made.

(2) Set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

2031.250. (a) The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections.

(b) If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any responses that contain an objection.

2031.260. Within 30 days after service of an inspection demand, or in unlawful detainer actions within five days of an inspection demand, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. In unlawful detainer actions, the party to whom an inspection demand is directed shall have at least five days from the dates of service of the demand to respond unless on motion of the party making the demand, the court has shortened the time for the response.

2031.270. (a) The party demanding an inspection and the responding party may agree to extend the time for service of a response to a set of inspection demands, or to particular items or

1 categories of items in a set, to a date beyond that provided in
2 Section 2031.260.

3 (b) This agreement may be informal, but it shall be confirmed
4 in a writing that specifies the extended date for service of a
5 response.

6 (c) Unless this agreement expressly states otherwise, it is
7 effective to preserve to the responding party the right to respond
8 to any item or category of item in the demand to which the
9 agreement applies in any manner specified in Sections 2031.210,
10 2031.220, 2031.230, 2031.240, and 2031.280.

11 2031.280. (a) Any documents produced in response to an
12 inspection demand shall either be produced as they are kept in the
13 usual course of business, or be organized and labeled to correspond
14 with the categories in the demand.

15 (b) If necessary, the responding party at the reasonable expense
16 of the demanding party shall, through detection devices, translate
17 any data compilations included in the demand into reasonably
18 usable form.

19 2031.290. (a) The inspection demand and the response to it
20 shall not be filed with the court.

21 (b) The party demanding an inspection shall retain both the
22 original of the inspection demand, with the original proof of
23 service affixed to it, and the original of the sworn response until
24 six months after final disposition of the action. At that time, both
25 originals may be destroyed, unless the court, on motion of any
26 party and for good cause shown, orders that the originals be
27 preserved for a longer period.

28 2031.300. If a party to whom an inspection demand is directed
29 fails to serve a timely response to it, the following rules apply:

30 (a) The party to whom the inspection demand is directed
31 waives any objection to the demand, including one based on
32 privilege or on the protection for work product under Chapter 4
33 (commencing with Section 2108.010). The court, on motion, may
34 relieve that party from this waiver on its determination that both
35 of the following conditions are satisfied:

36 (1) The party has subsequently served a response that is in
37 substantial compliance with Sections 2031.210, 2031.220,
38 2031.230, 2031.240, and 2031.280.

39 (2) The party's failure to serve a timely response was the result
40 of mistake, inadvertence, or excusable neglect.

1 (b) The party making the demand may move for an order
2 compelling response to the inspection demand.

3 (c) The court shall impose a monetary sanction under Chapter
4 7 (commencing with Section 2023.010) against any party, person,
5 or attorney who unsuccessfully makes or opposes a motion to
6 compel a response to an inspection demand, unless it finds that the
7 one subject to the sanction acted with substantial justification or
8 that other circumstances make the imposition of the sanction
9 unjust. If a party then fails to obey the order compelling a response,
10 the court may make those orders that are just, including the
11 imposition of an issue sanction, an evidence sanction, or a
12 terminating sanction under Chapter 7 (commencing with Section
13 2023.010). In lieu of or in addition to that sanction, the court may
14 impose a monetary sanction under Chapter 7 (commencing with
15 Section 2023.010).

16 2031.310. (a) On receipt of a response to an inspection
17 demand, the party demanding an inspection may move for an order
18 compelling further response to the demand if the demanding party
19 deems that any of the following apply:

20 (1) A statement of compliance with the demand is incomplete.

21 (2) A representation of inability to comply is inadequate,
22 incomplete, or evasive.

23 (3) An objection in the response is without merit or too general.

24 (b) A motion under subdivision (a) shall comply with both of
25 the following:

26 (1) The motion shall set forth specific facts showing good cause
27 justifying the discovery sought by the inspection demand.

28 (2) The motion shall be accompanied by a meet and confer
29 declaration under Section 2016.040.

30 (c) Unless notice of this motion is given within 45 days of the
31 service of the response, or any supplemental response, or on or
32 before any specific later date to which the demanding party and the
33 responding party have agreed in writing, the demanding party
34 waives any right to compel a further response to the inspection
35 demand.

36 (d) The court shall impose a monetary sanction under Chapter
37 7 (commencing with Section 2023.010) against any party, person,
38 or attorney who unsuccessfully makes or opposes a motion to
39 compel further response to an inspection demand, unless it finds
40 that the one subject to the sanction acted with substantial

justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

2031.320. (a) If a party filing a response to a demand for inspection under Section 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280 thereafter fails to permit the inspection in accordance with that party's statement of compliance, the party demanding the inspection may move for an order compelling compliance.

(b) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(c) If a party then fails to obey an order compelling inspection, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or in addition to that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

Article 3. Inspection and Production of Documents and Other Property in Specific Contexts

2031.510. (a) In any action, regardless of who is the moving party, where the boundary of land patented or otherwise granted by the state is in dispute, or the validity of any state patent or grant dated before 1950 is in dispute, all parties shall have the duty to disclose to all opposing parties all nonprivileged relevant written evidence then known and available, including evidence against interest, relating to the above issues.

(b) This evidence shall be disclosed within 120 days after the filing with the court of proof of service upon all named defendants. Thereafter, the parties shall have the continuing duty to make all subsequently discovered relevant and nonprivileged written evidence available to the opposing parties.

CHAPTER 15. PHYSICAL OR MENTAL EXAMINATION

Article 1. General Provisions

2032.010. (a) Nothing in this chapter affects tests under the Uniform Act on Blood Tests to Determine Paternity (Chapter 2 (commencing with Section 7550) of Part 2 of Division 12 of the Family Code).

(b) Nothing in this chapter requires the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Sections 411.30 and 411.35.

2032.020. (a) Any party may obtain discovery, subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by means of a physical or mental examination of (1) a party to the action, (2) an agent of any party, or (3) a natural person in the custody or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.

(b) A physical examination conducted under this chapter shall be performed only by a licensed physician or other appropriate licensed health care practitioner.

(c) A mental examination conducted under this chapter shall be performed only by a licensed physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders.

Article 2. Physical Examination of Personal Injury Plaintiff

2032.210. As used in this article, “plaintiff” includes a cross-complainant, and “defendant” includes a cross-defendant.

2032.220. (a) In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one

1 physical examination of the plaintiff, if both of the following
2 conditions are satisfied:

3 (1) The examination does not include any diagnostic test or
4 procedure that is painful, protracted, or intrusive.

5 (2) The examination is conducted at a location within 75 miles
6 of the residence of the examinee.

7 (b) A defendant may make a demand under this article without
8 leave of court after that defendant has been served or has appeared
9 in the action, whichever occurs first.

10 (c) A demand under subdivision (a) shall specify the time,
11 place, manner, conditions, scope, and nature of the examination,
12 as well as the identity and the specialty, if any, of the physician who
13 will perform the examination.

14 (d) A physical examination demanded under subdivision (a)
15 shall be scheduled for a date that is at least 30 days after service of
16 the demand. On motion of the party demanding the examination,
17 the court may shorten this time.

18 (e) The defendant shall serve a copy of the demand under
19 subdivision (a) on the plaintiff and on all other parties who have
20 appeared in the action.

21 2032.230. (a) The plaintiff to whom a demand for a physical
22 examination under this article is directed shall respond to the
23 demand by a written statement that the examinee will comply with
24 the demand as stated, will comply with the demand as specifically
25 modified by the plaintiff, or will refuse, for reasons specified in the
26 response, to submit to the demanded physical examination.

27 (b) Within 20 days after service of the demand the plaintiff to
28 whom the demand is directed shall serve the original of the
29 response to it on the defendant making the demand, and a copy of
30 the response on all other parties who have appeared in the action.
31 On motion of the defendant making the demand, the court may
32 shorten the time for response. On motion of the plaintiff to whom
33 the demand is directed, the court may extend the time for response.

34 2032.240. (a) If a plaintiff to whom a demand for a physical
35 examination under this article is directed fails to serve a timely
36 response to it, that plaintiff waives any objection to the demand.
37 The court, on motion, may relieve that plaintiff from this waiver
38 on its determination that both of the following conditions are
39 satisfied:

1 (1) The plaintiff has subsequently served a response that is in
2 substantial compliance with Section 2032.230.

3 (2) The plaintiff's failure to serve a timely response was the
4 result of mistake, inadvertence, or excusable neglect.

5 (b) The defendant may move for an order compelling response
6 and compliance with a demand for a physical examination.

7 (c) The court shall impose a monetary sanction under Chapter
8 7 (commencing with Section 2023.010) against any party, person,
9 or attorney who unsuccessfully makes or opposes a motion to
10 compel response and compliance with a demand for a physical
11 examination, unless it finds that the one subject to the sanction
12 acted with substantial justification or that other circumstances
13 make the imposition of the sanction unjust.

14 (d) If a plaintiff then fails to obey the order compelling
15 response and compliance, the court may make those orders that are
16 just, including the imposition of an issue sanction, an evidence
17 sanction, or a terminating sanction under Chapter 7 (commencing
18 with Section 2023.010). In lieu of or in addition to that sanction
19 the court may impose a monetary sanction under Chapter 7
20 (commencing with Section 2023.010).

21 2032.250. (a) If a defendant who has demanded a physical
22 examination under this article, on receipt of the plaintiff's
23 response to that demand, deems that any modification of the
24 demand, or any refusal to submit to the physical examination is
25 unwarranted, that defendant may move for an order compelling
26 compliance with the demand. This motion shall be accompanied
27 by a meet and confer declaration under Section 2016.040.

28 (b) The court shall impose a monetary sanction under Chapter
29 7 (commencing with Section 2023.010) against any party, person,
30 or attorney who unsuccessfully makes or opposes a motion to
31 compel compliance with a demand for a physical examination,
32 unless it finds that the one subject to the sanction acted with
33 substantial justification or that other circumstances make the
34 imposition of the sanction unjust.

35 2032.260. (a) The demand for a physical examination under
36 this article and the response to it shall not be filed with the court.

37 (b) The defendant shall retain both the original of the demand,
38 with the original proof of service affixed to it, and the original
39 response until six months after final disposition of the action. At
40 that time, the original may be destroyed, unless the court, on

1 motion of any party and for good cause shown, orders that the
2 originals be preserved for a longer period.

3
4 Article 3. Motion for Physical or Mental Examination
5

6 2032.310. (a) If any party desires to obtain discovery by a
7 physical examination other than that described in Article 2
8 (commencing with Section 2032.210), or by a mental
9 examination, the party shall obtain leave of court.

10 (b) A motion for an examination under subdivision (a) shall
11 specify the time, place, manner, conditions, scope, and nature of
12 the examination, as well as the identity and the specialty, if any, of
13 the person or persons who will perform the examination. The
14 motion shall be accompanied by a meet and confer declaration
15 under Section 2016.040.

16 (c) Notice of the motion shall be served on the person to be
17 examined and on all parties who have appeared in the action.

18 2032.320. (a) The court shall grant a motion for a physical or
19 mental examination under Section 2032.310 only for good cause
20 shown.

21 (b) If a party stipulates as provided in subdivision (c), the court
22 shall not order a mental examination of a person for whose
23 personal injuries a recovery is being sought except on a showing
24 of exceptional circumstances.

25 (c) A stipulation by a party under this subdivision shall include
26 both of the following:

27 (1) A stipulation that no claim is being made for mental and
28 emotional distress over and above that usually associated with the
29 physical injuries claimed.

30 (2) A stipulation that no expert testimony regarding this usual
31 mental and emotional distress will be presented at trial in support
32 of the claim for damages.

33 (d) An order granting a physical or mental examination shall
34 specify the person or persons who may perform the examination,
35 as well as the time, place, manner, diagnostic tests and procedures,
36 conditions, scope, and nature of the examination.

37 (e) If the place of the examination is more than 75 miles from
38 the residence of the person to be examined, an order to submit to
39 it shall be entered only if both of the following conditions are
40 satisfied:

1 (1) The court determines that there is good cause for the travel
2 involved.

3 (2) The order is conditioned on the advancement by the moving
4 party of the reasonable expenses and costs to the examinee for
5 travel to the place of examination.

6
7 Article 4. Failure To Submit To or Produce Another for
8 Physical or Mental Examination
9

10 2032.410. If a party is required to submit to a physical or
11 mental examination under Articles 2 (commencing with Section
12 2032.210) or 3 (commencing with Section 2032.310), or under
13 Section 2016.030, but fails to do so, the court, on motion of the
14 party entitled to the examination, may make those orders that are
15 just, including the imposition of an issue sanction, an evidence
16 sanction, or a terminating sanction under Chapter 7 (commencing
17 with Section 2023.010). In lieu of or in addition to that sanction,
18 the court may, on motion of the party, impose a monetary sanction
19 under Chapter 7 (commencing with Section 2023.010).

20 2032.420. If a party is required to produce another for a
21 physical or mental examination under Articles 2 (commencing
22 with Section 2032.210) or 3 (commencing with Section
23 2032.310), or under Section 2032.030, but fails to do so, the court,
24 on motion of the party entitled to the examination, may make those
25 orders that are just, including the imposition of an issue sanction,
26 an evidence sanction, or a terminating sanction under Chapter 7
27 (commencing with Section 2023.010), unless the party failing to
28 comply demonstrates an inability to produce that person for
29 examination. In lieu of or in addition to that sanction, the court may
30 impose a monetary sanction under Chapter 7 (commencing with
31 Section 2023.010).

32
33 Article 5. Conduct of Examination
34

35 2032.510. (a) The attorney for the examinee or for a party
36 producing the examinee, or that attorney's representative, shall be
37 permitted to attend and observe any physical examination
38 conducted for discovery purposes, and to record stenographically
39 or by audiotape any words spoken to or by the examinee during any
40 phase of the examination.

1 (b) The observer under subdivision (a) may monitor the
2 examination, but shall not participate in or disrupt it.

3 (c) If an attorney's representative is to serve as the observer, the
4 representative shall be authorized to so act by a writing subscribed
5 by the attorney which identifies the representative.

6 (d) If in the judgment of the observer the examiner becomes
7 abusive to the examinee or undertakes to engage in unauthorized
8 diagnostic tests and procedures, the observer may suspend it to
9 enable the party being examined or producing the examinee to
10 make a motion for a protective order.

11 (e) If the observer begins to participate in or disrupt the
12 examination, the person conducting the physical examination may
13 suspend the examination to enable the party at whose instance it
14 is being conducted to move for a protective order.

15 (f) The court shall impose a monetary sanction under Chapter
16 7 (commencing with Section 2032.010) against any party, person,
17 or attorney who unsuccessfully makes or opposes a motion for a
18 protective order under this section, unless it finds that the one
19 subject to the sanction acted with substantial justification or that
20 other circumstances make the imposition of the sanction unjust.

21 2032.520. If an examinee submits or authorizes access to
22 X-rays of any area of his or her body for inspection by the
23 examining physician, no additional X-rays of that area may be
24 taken by the examining physician except with consent of the
25 examinee or on order of the court for good cause shown.

26 2032.530. (a) The examiner and examinee shall have the
27 right to record a mental examination on audiotape.

28 (b) Nothing in this title shall be construed to alter, amend, or
29 affect existing case law with respect to the presence of the attorney
30 for the examinee or other persons during the examination by
31 agreement or court order.

32
33 Article 6. Reports of Examination
34

35 2032.610. (a) If a party submits to, or produces another for,
36 a physical or mental examination in compliance with a demand
37 under Article 2 (commencing with Section 2032.210), an order of
38 court under Article 3 (commencing with Section 2032.310), or an
39 agreement under Section 2016.030, that party has the option of
40 making a written demand that the party at whose instance the

1 examination was made deliver both of the following to the
2 demanding party:

3 (1) A copy of a detailed written report setting out the history,
4 examinations, findings, including the results of all tests made,
5 diagnoses, prognoses, and conclusions of the examiner.

6 (2) A copy of reports of all earlier examinations of the same
7 condition of the examinee made by that or any other examiner.

8 (b) If the option under subdivision (a) is exercised, a copy of the
9 requested reports shall be delivered within 30 days after service of
10 the demand, or within 15 days of trial, whichever is earlier.

11 (c) In the circumstances described in subdivision (a), the
12 protection for work product under Chapter 4 (commencing with
13 Section 2018.010) is waived, both for the examiner's writings and
14 reports and to the taking of the examiner's testimony.

15 2032.620. (a) If the party at whose instance an examination
16 was made fails to make a timely delivery of the reports demanded
17 under Section 2032.610, the demanding party may move for an
18 order compelling their delivery. This motion shall be accompanied
19 by a meet and confer declaration under Section 2016.040.

20 (b) The court shall impose a monetary sanction under Chapter
21 7 (commencing with Section 2023.010) against any party, person,
22 or attorney who unsuccessfully makes or opposes a motion to
23 compel delivery of medical reports under this section, unless it
24 finds that the one subject to the sanction acted with substantial
25 justification or that other circumstances make the imposition of the
26 sanction unjust.

27 (c) If a party then fails to obey an order compelling delivery of
28 demanded medical reports, the court may make those orders that
29 are just, including the imposition of an issue sanction, an evidence
30 sanction, or a terminating sanction under Chapter 7 (commencing
31 with Section 2023.010). In lieu of or in addition to those sanctions,
32 the court may impose a monetary sanction under Chapter 7
33 (commencing with Section 2023.010). The court shall exclude at
34 trial the testimony of any examiner whose report has not been
35 provided by a party.

36 2032.630. By demanding and obtaining a report of a physical
37 or mental examination under Section 2032.610 or 2032.620, or by
38 taking the deposition of the examiner, other than under Article 3
39 (commencing with Section 2034.410) of Chapter 18, the party
40 who submitted to, or produced another for, a physical or mental

1 examination waives in the pending action, and in any other action
2 involving the same controversy, any privilege, as well as any
3 protection for work product under Chapter 4 (commencing with
4 Section 2018.010), that the party or other examinee may have
5 regarding reports and writings as well as the testimony of every
6 other physician, psychologist, or licensed health care practitioner
7 who has examined or may thereafter examine the party or other
8 examinee in respect of the same physical or mental condition.

9 2032.640. A party receiving a demand for a report under
10 Section 2032.610 is entitled at the time of compliance to receive
11 in exchange a copy of any existing written report of any
12 examination of the same condition by any other physician,
13 psychologist, or licensed health care practitioner. In addition, that
14 party is entitled to receive promptly any later report of any
15 previous or subsequent examination of the same condition, by any
16 physician, psychologist, or licensed health care practitioner.

17 2032.650. (a) If a party who has demanded and received
18 delivery of medical reports under Section 2032.610 fails to deliver
19 existing or later reports of previous or subsequent examinations
20 under Section 2032.640, a party who has complied with Section
21 2032.610 may move for an order compelling delivery of medical
22 reports. This motion shall be accompanied by a meet and confer
23 declaration under Section 2016.040.

24 (b) The court shall impose a monetary sanction under Chapter
25 7 (commencing with Section 2023.010) against any party, person,
26 or attorney who unsuccessfully makes or opposes a motion to
27 compel delivery of medical reports under this section, unless it
28 finds that the one subject to the sanction acted with substantial
29 justification or that other circumstances make the imposition of the
30 sanction unjust.

31 (c) If a party then fails to obey an order compelling delivery of
32 medical reports, the court may make those orders that are just,
33 including the imposition of an issue sanction, an evidence
34 sanction, or a terminating sanction under Chapter 7 (commencing
35 with Section 2023.010). In lieu of or in addition to the sanction,
36 the court may impose a monetary sanction under Chapter 7
37 (commencing with Section 2023.010). The court shall exclude at
38 trial the testimony of any health care practitioner whose report has
39 not been provided by a party ordered to do so by the court.

40



CHAPTER 16. REQUESTS FOR ADMISSION

Article 1. Requests For Admission

2033.010. Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by a written request that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of fact, opinion relating to fact, or application of law to fact. A request for admission may relate to a matter that is in controversy between the parties.

2033.020. (a) A defendant may make requests for admission by a party without leave of court at any time.

(b) A plaintiff may make requests for admission by a party without leave of court at any time that is 10 days after the service of the summons on, or, in unlawful detainer actions, five days after the service of the summons on, or appearance by, that party, whichever occurs first.

(c) Notwithstanding subdivision (b), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time.

2033.030. (a) No party shall request, as a matter of right, that any other party admit more than 35 matters that do not relate to the genuineness of documents. If the initial set of admission requests does not exhaust this limit, the balance may be requested in subsequent sets.

(b) Unless a declaration as described in Section 2033.050 has been made, a party need only respond to the first 35 admission requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under Section 2033.230 on the ground that the limit has been exceeded.

(c) The number of requests for admission of the genuineness of documents is not limited except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense.

2033.040. (a) Subject to the right of the responding party to seek a protective order under Section 2033.080, any party who attaches a supporting declaration as described in Section 2033.050

1 may request a greater number of admissions by another party if the
2 greater number is warranted by the complexity or the quantity of
3 the existing and potential issues in the particular case.

4 (b) If the responding party seeks a protective order on the
5 ground that the number of requests for admission is unwarranted,
6 the propounding party shall have the burden of justifying the
7 number of requests for admission.

8 2033.050. Any party who is requesting or who has already
9 requested more than 35 admissions not relating to the genuineness
10 of documents by any other party shall attach to each set of requests
11 for admissions a declaration containing substantially the following
12 words:

13
14 DECLARATION FOR ADDITIONAL DISCOVERY
15

16
17 I, _____, declare:

18 1. I am (a party to this action or proceeding appearing in propria
19 persona) (presently the attorney for _____, a party to this
20 action or proceeding).

21 2. I am propounding to _____ the attached set of requests for
22 admission.

23 3. This set of requests for admission will cause the total number of
24 requests propounded to the party to whom they are directed to
25 exceed the number of requests permitted by Section 2033.030 of
26 the Code of Civil Procedure.

27 4. I have previously propounded a total of _____ requests
28 for admission to this party.

29 5. This set of requests for admission contains a total of
30 _____ requests.

31 6. I am familiar with the issues and the previous discovery
32 conducted by all of the parties in this case.

33 7. I have personally examined each of the requests in this set of
34 requests for admission.

35 8. This number of requests for admission is warranted under
36 Section 2033.040 of the Code of Civil Procedure because
37 _____. (Here state the reasons why the complexity or the
38 quantity of issues in the instant lawsuit warrant this number of
39 requests for admission.)

1 9. None of the requests in this set of requests is being propounded
2 for any improper purpose, such as to harass the party, or the
3 attorney for the party, to whom it is directed, or to cause
4 unnecessary delay or needless increase in the cost of litigation.
5 I declare under penalty of perjury under the laws of California that
6 the foregoing is true and correct, and that this declaration was
7 executed on _____.

8
9 _____
10 (Signature)

11
12 Attorney for _____
13

14 2033.060. (a) A party requesting admissions shall number
15 each set of requests consecutively.

16 (b) In the first paragraph immediately below the title of the
17 case, there shall appear the identity of the party requesting the
18 admissions, the set number, and the identity of the responding
19 party.

20 (c) Each request for admission in a set shall be separately set
21 forth and identified by letter or number.

22 (d) Each request for admission shall be full and complete in and
23 of itself. No preface or instruction shall be included with a set of
24 admission requests unless it has been approved under Chapter 17
25 (commencing with Section 2033.710).

26 (e) Any term specially defined in a request for admission shall
27 be typed with all letters capitalized whenever the term appears.

28 (f) No request for admission shall contain subparts, or a
29 compound, conjunctive, or disjunctive request unless it has been
30 approved under Chapter 17 (commencing with Section 2033.710).

31 (g) A party requesting an admission of the genuineness of any
32 documents shall attach copies of those documents to the requests,
33 and shall make the original of those documents available for
34 inspection on demand by the party to whom the requests for
35 admission are directed.

36 (h) No party shall combine in a single document requests for
37 admission with any other method of discovery.

38 2033.070. The party requesting admissions shall serve a copy
39 of them on the party to whom they are directed and on all other
40 parties who have appeared in the action.

1 2033.080. (a) When requests for admission have been made,
2 the responding party may promptly move for a protective order.
3 This motion shall be accompanied by a meet and confer
4 declaration under Section 2016.040.

5 (b) The court, for good cause shown, may make any order that
6 justice requires to protect any party from unwarranted annoyance,
7 embarrassment, oppression, or undue burden and expense. This
8 protective order may include, but is not limited to, one or more of
9 the following directions:

10 (1) That the set of admission requests, or particular requests in
11 the set, need not be answered at all.

12 (2) That, contrary to the representations made in a declaration
13 submitted under Section 2033.050, the number of admission
14 requests is unwarranted.

15 (3) That the time specified in Section 2033.250 to respond to
16 the set of admission requests, or to particular requests in the set,
17 be extended.

18 (4) That a trade secret or other confidential research,
19 development, or commercial information not be admitted or be
20 admitted only in a certain way.

21 (5) That some or all of the answers to requests for admission be
22 sealed and thereafter opened only on order of the court.

23 (c) If the motion for a protective order is denied in whole or in
24 part, the court may order that the responding party provide or
25 permit the discovery against which protection was sought on terms
26 and conditions that are just.

27 (d) The court shall impose a monetary sanction under Chapter
28 7 (commencing with Section 2023.010) against any party, person,
29 or attorney who unsuccessfully makes or opposes a motion for a
30 protective order under this section, 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
34 Article 2. Response to Requests For Admission
35

36 2033.210. (a) The party to whom requests for admission
37 have been directed shall respond in writing under oath separately
38 to each request.

39 (b) Each response shall answer the substance of the requested
40 admission, or set forth an objection to the particular request.

(c) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party.

(d) Each answer or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding request, but the text of the particular request need not be repeated.

2033.220. (a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) Each answer shall:

(1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.

(2) Deny so much of the matter involved in the request as is untrue.

(3) Specify so much of the matter involved in the request as to the \ truth of which the responding party lacks sufficient information or knowledge.

(c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

2033.230. (a) If only a part of a request for admission is objectionable, the remainder of the request shall be answered.

(b) If an objection is made to a request or to a part of a request, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the matter as to which an admission is requested is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

2033.240. (a) The party to whom the requests for admission are directed shall sign the response under oath, unless the response contains only objections.

(b) If that party is a public or private corporation, or a partnership or association or governmental agency, one of its

1 officers or agents shall sign the response under oath on behalf of
2 that party. If the officer or agent signing the response on behalf of
3 that party is an attorney acting in that capacity for the party, that
4 party waives any lawyer-client privilege and any protection for
5 work product under Chapter 4 (commencing with Section
6 2018.010) during any subsequent discovery from that attorney
7 concerning the identity of the sources of the information contained
8 in the response.

9 (c) The attorney for the responding party shall sign any
10 response that contains an objection.

11 2033.250. Within 30 days after service of requests for
12 admission, or in unlawful detainer actions within five days after
13 service of requests for admission, the party to whom the requests
14 are directed shall serve the original of the response to them on the
15 requesting party, and a copy of the response on all other parties
16 who have appeared, unless on motion of the requesting party the
17 court has shortened the time for response, or unless on motion of
18 the responding party the court has extended the time for response.
19 In unlawful detainer actions, the party to whom the request is
20 directed shall have at least five days from the date of service to
21 respond unless on motion of the requesting party the court has
22 shortened the time for response.

23 2033.260. (a) The party requesting admissions and the
24 responding party may agree to extend the time for service of a
25 response to a set of admission requests, or to particular requests in
26 a set, to a date beyond that provided in Section 2033.250.

27 (b) This agreement may be informal, but it shall be confirmed
28 in a writing that specifies the extended date for service of a
29 response.

30 (c) Unless this agreement expressly states otherwise, it is
31 effective to preserve to the responding party the right to respond
32 to any request for admission to which the agreement applies in any
33 manner specified in Sections 2033.210, 2033.220, and 2033.230.

34 (d) Notice of this agreement shall be given by the responding
35 party to all other parties who were served with a copy of the
36 request.

37 2033.270. (a) The requests for admission and the response to
38 them shall not be filed with the court.

39 (b) The party requesting admissions shall retain both the
40 original of the requests for admission, with the original proof of

1 service affixed to them, and the original of the sworn response until
2 six months after final disposition of the action. At that time, both
3 originals may be destroyed, unless the court, on motion of any
4 party and for good cause shown, orders that the originals be
5 preserved for a longer period.

6 2033.280. If a party to whom requests for admission are
7 directed fails to serve a timely response, the following rules apply:

8 (a) The party to whom the requests for admission are directed
9 waives any objection to the requests, including one based on
10 privilege or on the protection for work product under Chapter 4
11 (commencing with Section 2018.010). The court, on motion, may
12 relieve that party from this waiver on its determination that both
13 of the following conditions are satisfied:

14 (1) The party has subsequently served a response that is in
15 substantial compliance with Sections 2033.210, 2033.220, and
16 2033.230.

17 (2) The party's failure to serve a timely response was the result
18 of mistake, inadvertence, or excusable neglect.

19 (b) The requesting party may move for an order that the
20 genuineness of any documents and the truth of any matters
21 specified in the requests be deemed admitted, as well as for a
22 monetary sanction under Chapter 7 (commencing with Section
23 2023.010).

24 (c) The court shall make this order, unless it finds that the party
25 to whom the requests for admission have been directed has served,
26 before the hearing on the motion, a proposed response to the
27 requests for admission that is in substantial compliance with
28 Section 2033.100. It is mandatory that the court impose a
29 monetary sanction under Chapter 7 (commencing with Section
30 2023.010) on the party or attorney, or both, whose failure to serve
31 a timely response to requests for admission necessitated this
32 motion.

33 2033.290. (a) On receipt of a response to requests for
34 admissions, the party requesting admissions may move for an
35 order compelling a further response if that party deems that either
36 or both of the following apply:

37 (1) An answer to a particular request is evasive or incomplete.

38 (2) An objection to a particular request is without merit or too
39 general.

1 (b) A motion under subdivision (a) shall be accompanied by a
2 meet and confer declaration under Section 2016.040.

3 (c) Unless notice of this motion is given within 45 days of the
4 service of the response, or any supplemental response, or any
5 specific later date to which the requesting party and the responding
6 party have agreed in writing, the requesting party waives any right
7 to compel further response to the requests for admission.

8 (d) The court shall impose a monetary sanction under Chapter
9 7 (commencing with Section 2023.010) against any party, person,
10 or attorney who unsuccessfully makes or opposes a motion to
11 compel further response, unless it finds that the one subject to the
12 sanction acted with substantial justification or that other
13 circumstances make the imposition of the sanction unjust.

14 (e) If a party then fails to obey an order compelling further
15 response to requests for admission, the court may order that the
16 matters involved in the requests be deemed admitted. In lieu of or
17 in addition to this order, the court may impose a monetary sanction
18 under Chapter 7 (commencing with Section 2023.010).

19 2033.300. (a) A party may withdraw or amend an admission
20 made in response to a request for admission only on leave of court
21 granted after notice to all parties.

22 (b) The court may permit withdrawal or amendment of an
23 admission only if it determines that the admission was the result
24 of mistake, inadvertence, or excusable neglect, and that the party
25 who obtained the admission will not be substantially prejudiced in
26 maintaining that party's action or defense on the merits.

27 (c) The court may impose conditions on the granting of the
28 motion that are just, including, but not limited to, the following:

29 (1) An order that the party who obtained the admission be
30 permitted to pursue additional discovery related to the matter
31 involved in the withdrawn or amended admission.

32 (2) An order that the costs of any additional discovery be borne
33 in whole or in part by the party withdrawing or amending the
34 admission.

35
36 Article 3. Effect of Admission
37

38 2033.410. (a) Any matter admitted in response to a request
39 for admission is conclusively established against the party making
40 the admission in the pending action, unless the court has permitted

1 withdrawal or amendment of that admission under Section
2 2033.300.

3 (b) Notwithstanding subdivision (a), any admission made by a
4 party under this section is binding only on that party and is made
5 for the purpose of the pending action only. It is not an admission
6 by that party for any other purpose, and it shall not be used in any
7 manner against that party in any other proceeding.

8 2033.420. (a) If a party fails to admit the genuineness of any
9 document or the truth of any matter when requested to do so under
10 this chapter, and if the party requesting that admission thereafter
11 proves the genuineness of that document or the truth of that matter,
12 the party requesting the admission may move the court for an order
13 requiring the party to whom the request was directed to pay the
14 reasonable expenses incurred in making that proof, including
15 reasonable attorney's fees.

16 (b) The court shall make this order unless it finds any of the
17 following:

18 (1) An objection to the request was sustained or a response to
19 it was waived under Section 2033.290.

20 (2) The admission sought was of no substantial importance.

21 (3) The party failing to make the admission had reasonable
22 ground to believe that that party would prevail on the matter.

23 (4) There was other good reason for the failure to admit.
24

25 CHAPTER 17. FORM INTERROGATORIES AND REQUESTS FOR
26 ADMISSION
27

28 2033.710. The Judicial Council shall develop and approve
29 official form interrogatories and requests for admission of the
30 genuineness of any relevant documents or of the truth of any
31 relevant matters of fact for use in any civil action in a state court
32 based on personal injury, property damage, wrongful death,
33 unlawful detainer, breach of contract, family law, or fraud and for
34 any other civil actions the Judicial Council deems appropriate.

35 2033.720. (a) The Judicial Council shall develop and
36 approve official form interrogatories for use by a victim who has
37 not received complete payment of a restitution order made
38 pursuant to Section 1202.4 of the Penal Code.

39 (b) Notwithstanding whether a victim initiates or maintains an
40 action to satisfy the unpaid restitution order, a victim may

propound the form interrogatories approved pursuant to this section once each calendar year. The defendant subject to the restitution order shall, in responding to the interrogatories propounded, provide current information regarding the nature, extent, and location of any assets, income, and liabilities in which the defendant claims a present or future interest.

2033.730. (a) In developing the form interrogatories and requests for admission required by Sections 2033.710 and 2033.720, the Judicial Council shall consult with a representative advisory committee which shall include, but not be limited to, representatives of all of the following:

- (1) The plaintiff's bar.
- (2) The defense bar.
- (3) The public interest bar.
- (4) Court administrators.
- (5) The public.

(b) The form interrogatories and requests for admission shall be drafted in nontechnical language.

2033.740. (a) Use of the form interrogatories and requests for admission approved by the Judicial Council shall be optional.

(b) The form interrogatories and requests for admission shall be made available through the office of the clerk of the appropriate trial court.

(c) The Judicial Council shall promulgate any necessary rules to govern the use of the form interrogatories and requests for admission.

CHAPTER 18. SIMULTANEOUS EXCHANGE OF EXPERT WITNESS INFORMATION

Article 1. General Provisions

2034.010. This chapter does not apply to exchanges of lists of experts and valuation data in eminent domain proceedings under Chapter 7 (commencing with Section 1258.010) of Title 7 of Part 3.

Article 2. Demand for Exchange of Expert Witness
Information

2034.210. After the setting of the initial trial date for the action, any party may obtain discovery by demanding that all parties simultaneously exchange information concerning each other's expert trial witnesses to the following extent:

(a) Any party may demand a mutual and simultaneous exchange by all parties of a list containing the name and address of any natural person, including one who is a party, whose oral or deposition testimony in the form of an expert opinion any party expects to offer in evidence at the trial.

(b) If any expert designated by a party under subdivision (a) is a party or an employee of a party, or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action, the designation of that witness shall include or be accompanied by an expert witness declaration under Section 2034.260.

(c) Any party may also include a demand for the mutual and simultaneous production for inspection and copying of all discoverable reports and writings, if any, made by any expert described in subdivision (b) in the course of preparing that expert's opinion.

2034.220. Any party may make a demand for an exchange of information concerning expert trial witnesses without leave of court. A party shall make this demand no later than the 10th day after the initial trial date has been set, or 70 days before that trial date, whichever is closer to the trial date.

2034.230. (a) A demand for an exchange of information concerning expert trial witnesses shall be in writing and shall identify, below the title of the case, the party making the demand. The demand shall state that it is being made under this chapter.

(b) The demand shall specify the date for the exchange of lists of expert trial witnesses, expert witness declarations, and any demanded production of writings. The specified date of exchange shall be 50 days before the initial trial date, or 20 days after service of the demand, whichever is closer to the trial date, unless the court, on motion and a showing of good cause, orders an earlier or later date of exchange.

1 2034.240. The party demanding an exchange of information
2 concerning expert trial witnesses shall serve the demand on all
3 parties who have appeared in the action.

4 2034.250. (a) A party who has been served with a demand to
5 exchange information concerning expert trial witnesses may
6 promptly move for a protective order. This motion shall be
7 accompanied by a meet and confer declaration under Section
8 2016.040.

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

14 (1) That the demand be quashed because it was not timely
15 served.

16 (2) That the date of exchange be earlier or later than that
17 specified in the demand.

18 (3) That the exchange be made only on specified terms and
19 conditions.

20 (4) That the production and exchange of any reports and
21 writings of experts be made at a different place or at a different
22 time than specified in the demand.

23 (5) That some or all of the parties be divided into sides on the
24 basis of their identity of interest in the issues in the action, and that
25 the designation of any experts as described in subdivision (b) of
26 Section 2034.210 be made by any side so created.

27 (6) That a party or a side reduce the list of employed or retained
28 experts designated by that party or side under subdivision (b) of
29 Section 2034.210.

30 (c) If the motion for a protective order is denied in whole or in
31 part, the court may order that the parties against whom the motion
32 is brought, provide or permit the discovery against which the
33 protection was sought on those terms and conditions that are just.

34 (d) The court shall impose a monetary sanction under Chapter
35 7 (commencing with Section 2023.010) against any party, person,
36 or attorney who unsuccessfully makes or opposes a motion for a
37 protective order under this section, unless it finds that the one
38 subject to the sanction acted with substantial justification or that
39 other circumstances make the imposition of the sanction unjust.

1 2034.260. (a) All parties who have appeared in the action
2 shall exchange information concerning expert witnesses in writing
3 on or before the date of exchange specified in the demand. The
4 exchange of information may occur at a meeting of the attorneys
5 for the parties involved or by a mailing on or before the date of
6 exchange.

7 (b) The exchange of expert witness information shall include
8 either of the following:

9 (1) A list setting forth the name and address of any person
10 whose expert opinion that party expects to offer in evidence at the
11 trial.

12 (2) A statement that the party does not presently intend to offer
13 the testimony of any expert witness.

14 (c) If any witness on the list is an expert as described in
15 subdivision (b) of Section 2034.210, the exchange shall also
16 include or be accompanied by an expert witness declaration signed
17 only by the attorney for the party designating the expert, or by that
18 party if that party has no attorney. This declaration shall be under
19 penalty of perjury and shall contain:

20 (1) A brief narrative statement of the qualifications of each
21 expert.

22 (2) A brief narrative statement of the general substance of the
23 testimony that the expert is expected to give.

24 (3) A representation that the expert has agreed to testify at the
25 trial.

26 (4) A representation that the expert will be sufficiently familiar
27 with the pending action to submit to a meaningful oral deposition
28 concerning the specific testimony, including any opinion and its
29 basis, that the expert is expected to give at trial.

30 (5) A statement of the expert's hourly and daily fee for
31 providing deposition testimony and for consulting with the
32 retaining attorney.

33 2034.270. If a demand for an exchange of information
34 concerning expert trial witnesses includes a demand for
35 production of reports and writings as described in subdivision (c)
36 of Section 2034.210, all parties shall produce and exchange, at the
37 place and on the date specified in the demand, all discoverable
38 reports and writings, if any, made by any designated expert
39 described in subdivision (b) of Section 2034.210.



1 2034.280. (a) Within 20 days after the exchange described in
2 Section 2034.260, any party who engaged in the exchange may
3 submit a supplemental expert witness list containing the name and
4 address of any experts who will express an opinion on a subject to
5 be covered by an expert designated by an adverse party to the
6 exchange, if the party supplementing an expert witness list has not
7 previously retained an expert to testify on that subject.

8 (b) This supplemental list shall be accompanied by an expert
9 witness declaration under subdivision (c) of Section 2034.260
10 concerning those additional experts, and by all discoverable
11 reports and writings, if any, made by those additional experts.

12 (c) The party shall also make those experts available
13 immediately for a deposition under Article 3 (commencing with
14 Section 2034.410), which deposition may be taken even though
15 the time limit for discovery under Chapter 8 (commencing with
16 Section 2024.010) has expired.

17 2034.290. (a) A demand for an exchange of information
18 concerning expert trial witnesses, and any expert witness lists and
19 declarations exchanged shall not be filed with the court.

20 (b) The party demanding the exchange shall retain both the
21 original of the demand, with the original proof of service affixed,
22 and the original of all expert witness lists and declarations
23 exchanged in response to the demand until six months after final
24 disposition of the action. At that time, all originals may be
25 destroyed unless the court, on motion of any party and for good
26 cause shown, orders that the originals be preserved for a longer
27 period.

28 (c) Notwithstanding subdivisions (a) and (b), a demand for
29 exchange of information concerning expert trial witnesses, and all
30 expert witness lists and declarations exchanged in response to it,
31 shall be lodged with the court when their contents become relevant
32 to an issue in any pending matter in the action.

33 2034.300. Except as provided in Section 2034.310 and in
34 Articles 4 (commencing with Section 2034.610) and 5
35 (commencing with Section 2034.710), on objection of any party
36 who has made a complete and timely compliance with Section
37 2034.260, the trial court shall exclude from evidence the expert
38 opinion of any witness that is offered by any party who has
39 unreasonably failed to do any of the following:

40 (a) List that witness as an expert under Section 2034.260.

1 (b) Submit an expert witness declaration.

2 (c) Produce reports and writings of expert witnesses under
3 Section 2034.270.

4 (d) Make that expert available for a deposition under Article 3
5 (commencing with Section 2034.410).

6 2034.310. A party may call as a witness at trial an expert not
7 previously designated by that party if either of the following
8 conditions is satisfied:

9 (a) That expert has been designated by another party and has
10 thereafter been deposed under Article 3 (commencing with
11 Section 2034.410).

12 (b) That expert is called as a witness to impeach the testimony
13 of an expert witness offered by any other party at the trial. This
14 impeachment may include testimony to the falsity or nonexistence
15 of any fact used as the foundation for any opinion by any other
16 party's expert witness, but may not include testimony that
17 contradicts the opinion.

18
19 Article 3. Deposition of Expert Witness
20

21 2034.410. On receipt of an expert witness list from a party,
22 any other party may take the deposition of any person on the list.
23 The procedures for taking oral and written depositions set forth in
24 Chapters 9 (commencing with Section 2025.010), 10
25 (commencing with Section 2026.010), and 11 (commencing with
26 Section 2028.010) apply to a deposition of a listed trial expert
27 witness except as provided in this article.

28 2034.420. The deposition of any expert described in
29 subdivision (b) of Section 2034.260 shall be taken at a place that
30 is within 75 miles of the courthouse where the action is pending.
31 On motion for a protective order by the party designating an expert
32 witness, and on a showing of exceptional hardship, the court may
33 order that the deposition be taken at a more distant place from the
34 courthouse.

35 2034.430. (a) Except as provided in subdivision (f), this
36 section applies to an expert witness, other than a party or an
37 employee of a party, who is any of the following:

38 (1) An expert described in subdivision (b) of Section 2034.260.

39 (2) A treating physician and surgeon or other treating health
40 care practitioner who is to be asked during the deposition to

1 express opinion testimony, including opinion or factual testimony
2 regarding the past or present diagnosis or prognosis made by the
3 practitioner or the reasons for a particular treatment decision made
4 by the practitioner, but not including testimony requiring only the
5 reading of words and symbols contained in the relevant medical
6 record or, if those words and symbols are not legible to the
7 deponent, the approximation by the deponent of what those words
8 or symbols are.

9 (3) An architect, professional engineer, or licensed land
10 surveyor who was involved with the original project design or
11 survey for which that person is asked to express an opinion within
12 the person's expertise and relevant to the action or proceeding.

13 (b) A party desiring to depose an expert witness described in
14 subdivision (a) shall pay the expert's reasonable and customary
15 hourly or daily fee for any time spent at the deposition from the
16 time noticed in the deposition subpoena, or from the time of the
17 arrival of the expert witness should that time be later than the time
18 noticed in the deposition subpoena, until the time the expert
19 witness is dismissed from the deposition, regardless of whether the
20 expert is actually deposed by any party attending the deposition.

21 (c) If any counsel representing the expert or a nonnoticing party
22 is late to the deposition, the expert's reasonable and customary
23 hourly or daily fee for the time period determined from the time
24 noticed in the deposition subpoena until the counsel's late arrival,
25 shall be paid by that tardy counsel.

26 (d) Notwithstanding subdivision (c), the hourly or daily fee
27 charged to the tardy counsel shall not exceed the fee charged to the
28 party who retained the expert, except where the expert donated
29 services to a charitable or other nonprofit organization.

30 (e) A daily fee shall only be charged for a full day of attendance
31 at a deposition or where the expert was required by the deposing
32 party to be available for a full day and the expert necessarily had
33 to forego all business that the expert would otherwise have
34 conducted that day but for the request that the expert be available
35 all day for the scheduled deposition.

36 (f) In a worker's compensation case arising under Division 4
37 (commencing with Section 3201) or Division 4.5 (commencing
38 with Section 6100) of the Labor Code, a party desiring to depose
39 any expert on another party's expert witness list shall pay the fee
40 under this section.

1 2034.440. The party designating an expert is responsible for
2 any fee charged by the expert for preparing for a deposition and for
3 traveling to the place of the deposition, as well as for any travel
4 expenses of the expert.

5 2034.450. (a) The party taking the deposition of an expert
6 witness shall either accompany the service of the deposition notice
7 with a tender of the expert's fee based on the anticipated length of
8 the deposition, or tender that fee at the commencement of the
9 deposition.

10 (b) The expert's fee shall be delivered to the attorney for the
11 party designating the expert.

12 (c) If the deposition of the expert takes longer than anticipated,
13 the party giving notice of the deposition shall pay the balance of
14 the expert's fee within five days of receipt of an itemized statement
15 from the expert.

16 2034.460. (a) The service of a proper deposition notice
17 accompanied by the tender of the expert witness fee described in
18 Section 2034.430 is effective to require the party employing or
19 retaining the expert to produce the expert for the deposition.

20 (b) If the party noticing the deposition fails to tender the
21 expert's fee under Section 2034.430, the expert shall not be
22 deposed at that time unless the parties stipulate otherwise.

23 2034.470. (a) If a party desiring to take the deposition of an
24 expert witness under this article deems that the hourly or daily fee
25 of that expert for providing deposition testimony is unreasonable,
26 that party may move for an order setting the compensation of that
27 expert. Notice of this motion shall also be given to the expert.

28 (b) A motion under subdivision (a) shall be accompanied by a
29 meet and confer declaration under Section 2016.040. In any
30 attempt at an informal resolution under Section 2016.040, either
31 the party or the expert shall provide the other with all of the
32 following:

33 (1) Proof of the ordinary and customary fee actually charged
34 and received by that expert for similar services provided outside
35 the subject litigation.

36 (2) The total number of times the presently demanded fee has
37 ever been charged and received by that expert.

38 (3) The frequency and regularity with which the presently
39 demanded fee has been charged and received by that expert within
40 the two-year period preceding the hearing on the motion.

1 (c) In addition to any other facts or evidence, the expert or the
2 party designating the expert shall provide, and the court's
3 determination as to the reasonableness of the fee shall be based on,
4 proof of the ordinary and customary fee actually charged and
5 received by that expert for similar services provided outside the
6 subject litigation.

7 (d) In an action filed after January 1, 1994, the expert or the
8 party designating the expert shall also provide, and the court's
9 determination as to the reasonableness of the fee shall also be
10 based on, both of the following:

11 (1) The total number of times the presently demanded fee has
12 ever been charged and received by that expert.

13 (2) The frequency and regularity with which the presently
14 demanded fee has been charged and received by that expert within
15 the two-year period preceding the hearing on the motion.

16 (e) The court may also consider the ordinary and customary
17 fees charged by similar experts for similar services within the
18 relevant community and any other factors the court deems
19 necessary or appropriate to make its determination.

20 (f) Upon a determination that the fee demanded by that expert
21 is unreasonable, and based upon the evidence and factors
22 considered, the court shall set the fee of the expert providing
23 testimony.

24 (g) The court shall impose a monetary sanction under Chapter
25 7 (commencing with Section 2023.010) against any party, person,
26 or attorney who unsuccessfully makes or opposes a motion to set
27 the expert witness fee, unless it finds that the one subject to the
28 sanction acted with substantial justification or that other
29 circumstances make the imposition of the sanction unjust.

30
31 Article 4. Motion To Augment or Amend Expert Witness List
32 or Declaration
33

34 2034.610. (a) On motion of any party who has engaged in a
35 timely exchange of expert witness information, the court may
36 grant leave to do either or both of the following:

37 (1) Augment that party's expert witness list and declaration by
38 adding the name and address of any expert witness whom that
39 party has subsequently retained.

(2) Amend that party's expert witness declaration with respect to the general substance of the testimony that an expert previously designated is expected to give.

(b) A motion under subdivision (a) shall be made at a sufficient time in advance of the time limit for the completion of discovery under Chapter 8 (commencing with Section 2024.010) to permit the deposition of any expert to whom the motion relates to be taken within that time limit. Under exceptional circumstances, the court may permit the motion to be made at a later time.

(c) The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

2034.620. The court shall grant leave to augment or amend an expert witness list or declaration only if all of the following conditions are satisfied:

(a) The court has taken into account the extent to which the opposing party has relied on the list of expert witnesses.

(b) The court has determined that any party opposing the motion will not be prejudiced in maintaining that party's action or defense on the merits.

(c) The court has determined either of the following:

(1) The moving party would not in the exercise of reasonable diligence have determined to call that expert witness or have decided to offer the different or additional testimony of that expert witness.

(2) The moving party failed to determine to call that expert witness, or to offer the different or additional testimony of that expert witness as a result of mistake, inadvertence, surprise, or excusable neglect, and the moving party has done both of the following:

(A) Sought leave to augment or amend promptly after deciding to call the expert witness or to offer the different or additional testimony.

(B) Promptly thereafter served a copy of the proposed expert witness information concerning the expert or the testimony described in Section 2034.260 on all other parties who have appeared in the action.

(d) Leave to augment or amend is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with Section 2034.410), and on any other terms as may be just, including, but not limited to, leave to

1 any party opposing the motion to designate additional expert
2 witnesses or to elicit additional opinions from those previously
3 designated, a continuance of the trial for a reasonable period of
4 time, and the awarding of costs and litigation expenses to any party
5 opposing the motion.

6 2034.630. The court shall impose a monetary sanction under
7 Chapter 7 (commencing with Section 2023.010) against any party,
8 person, or attorney who unsuccessfully makes or opposes a motion
9 to augment or amend expert witness information, unless it finds
10 that the one subject to the sanction acted with substantial
11 justification or that other circumstances make the imposition of the
12 sanction unjust.

13
14 Article 5. Motion To Submit Tardy Expert Witness
15 Information
16

17 2034.710. (a) On motion of any party who has failed to
18 submit expert witness information on the date specified in a
19 demand for that exchange, the court may grant leave to submit that
20 information on a later date.

21 (b) A motion under subdivision (a) shall be made a sufficient
22 time in advance of the time limit for the completion of discovery
23 under Chapter 8 (commencing with Section 2024.010) to permit
24 the deposition of any expert to whom the motion relates to be taken
25 within that time limit. Under exceptional circumstances, the court
26 may permit the motion to be made at a later time.

27 (c) The motion shall be accompanied by a meet and confer
28 declaration under Section 2016.040.

29 2034.720. The court shall grant leave to submit tardy expert
30 witness information only if all of the following conditions are
31 satisfied:

32 (a) The court has taken into account the extent to which the
33 opposing party has relied on the absence of a list of expert
34 witnesses.

35 (b) The court has determined that any party opposing the
36 motion will not be prejudiced in maintaining that party's action or
37 defense on the merits.

38 (c) The court has determined that the moving party did all of the
39 following:

(1) Failed to submit the information as the result of mistake, inadvertence, surprise, or excusable neglect.

(2) Sought leave to submit the information promptly after learning of the mistake, inadvertence, surprise, or excusable neglect.

(3) Promptly thereafter served a copy of the proposed expert witness information described in Section 2034.260 on all other parties who have appeared in the action.

(d) The order is conditioned on the moving party making the expert available immediately for a deposition under Article 3 (commencing with Section 2034.410), and on any other terms as may be just, including, but not limited to, leave to any party opposing the motion to designate additional expert witnesses or to elicit additional opinions from those previously designated, a continuance of the trial for a reasonable period of time, and the awarding of costs and litigation expenses to any party opposing the motion.

2034.730. The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to submit tardy expert witness information, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

CHAPTER 19. PERPETUATION OF TESTIMONY OR PRESERVATION OF EVIDENCE BEFORE FILING ACTION

2035.010. (a) One who expects to be a party to any action that may be cognizable in any court of the State of California, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that party's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

(b) One shall not employ the procedures of this chapter for the purpose either of ascertaining the possible existence of a cause of

1 action or a defense to it, or of identifying those who might be made
2 parties to an action not yet filed.

3 2035.020. The methods available for discovery conducted for
4 the purposes set forth in Section 2035.010 are all of the following:

- 5 (a) Oral and written depositions.
- 6 (b) Inspections of documents, things, and places.
- 7 (c) Physical and mental examinations.

8 2035.030. (a) One who desires to perpetuate testimony or
9 preserve evidence for the purposes set forth in Section 2035.010
10 shall file a verified petition in the superior court of the county of
11 the residence of at least one expected adverse party, or, if no
12 expected adverse party is a resident of the State of California, in
13 the superior court of a county where the action or proceeding may
14 be filed.

15 (b) The petition shall be titled in the name of the one who
16 desires the perpetuation of testimony or the preservation of
17 evidence. The petition shall set forth all of the following:

18 (1) The expectation that the petitioner will be a party to an
19 action cognizable in a court of the State of California.

20 (2) The present inability of the petitioner either to bring that
21 action or to cause it to be brought.

22 (3) The subject matter of the expected action and the
23 petitioner's involvement.

24 (4) The particular discovery methods described in Section
25 2035.020 that the petitioner desires to employ.

26 (5) The facts that the petitioner desires to establish by the
27 proposed discovery.

28 (6) The reasons for desiring to perpetuate or preserve these
29 facts before an action has been filed.

30 (7) The name or a description of those whom the petitioner
31 expects to be adverse parties so far as known.

32 (8) The name and address of those from whom the discovery
33 is to be sought.

34 (9) The substance of the information expected to be elicited
35 from each of those from whom discovery is being sought.

36 (c) The petition shall request the court to enter an order
37 authorizing the petitioner to engage in discovery by the described
38 methods for the purpose of perpetuating the described testimony
39 or preserving the described evidence.

1 2035.040. (a) The petitioner shall cause service of a notice of
2 the petition under Section 2035.030 to be made on each natural
3 person or organization named in the petition as an expected
4 adverse party. This service shall be made in the same manner
5 provided for the service of a summons.

6 (b) The service of the notice shall be accompanied by a copy of
7 the petition. The notice shall state that the petitioner will apply to
8 the court at a time and place specified in the notice for the order
9 requested in the petition.

10 (c) This service shall be effected at least 20 days prior to the
11 date specified in the notice for the hearing on the petition.

12 (d) If after the exercise of due diligence, the petitioner is unable
13 to cause service to be made on any expected adverse party named
14 in the petition, the court in which the petition is filed shall make
15 an order for service by publication.

16 (e) If any expected adverse party served by publication does not
17 appear at the hearing, the court shall appoint an attorney to
18 represent that party for all purposes, including the
19 cross-examination of any person whose testimony is taken by
20 deposition. The court shall order that the petitioner pay the
21 reasonable fees and expenses of any attorney so appointed.

22 2035.050. (a) If the court determines that all or part of the
23 discovery requested under this chapter may prevent a failure or
24 delay of justice, it shall make an order authorizing that discovery.

25 (b) The order shall identify any witness whose deposition may
26 be taken, and any documents, things, or places that may be
27 inspected, and any person whose physical or mental condition may
28 be examined.

29 (c) Any authorized depositions, inspections, and physical or
30 mental examinations shall then be conducted in accordance with
31 the provisions of this title relating to those methods of discovery
32 in actions that have been filed.

33 2035.060. If a deposition to perpetuate testimony has been
34 taken either under the provisions of this chapter, or under
35 comparable provisions of the laws of another state, or the federal
36 courts, or a foreign nation, that deposition may be used, in any
37 action involving the same subject matter that is brought in a court
38 of the State of California, in accordance with Section 2025.620
39 against any party, or the successor in interest of any party, named
40 in the petition as an expected adverse party.

1 CHAPTER 20. PERPETUATION OF TESTIMONY OR PRESERVATION
2 OF INFORMATION PENDING APPEAL
3

4 2036.010. If an appeal has been taken from a judgment
5 entered by any court of the State of California, or if the time for
6 taking an appeal has not expired, a party may obtain discovery
7 within the scope delimited by Chapters 2 (commencing with
8 Section 2017.010) and 3 (commencing with Section 2017.710),
9 and subject to the restrictions set forth in Chapter 5 (commencing
10 with Section 2019.010), for the purpose of perpetuating testimony
11 or preserving information for use in the event of further
12 proceedings in that court.

13 2036.020. The methods available for discovery for the
14 purpose set forth in Section 2036.010 are all of the following:

- 15 (a) Oral and written depositions.
- 16 (b) Inspections of documents, things, and places.
- 17 (c) Physical and mental examinations.

18 2036.030. (a) A party who desires to obtain discovery
19 pending appeal shall obtain leave of the court that entered the
20 judgment. This motion shall be made on the same notice to and
21 service of parties as is required for discovery sought in an action
22 pending in that court.

23 (b) The motion for leave to conduct discovery pending appeal
24 shall set forth all of the following:

25 (1) The names and addresses of the natural persons or
26 organizations from whom the discovery is being sought.

27 (2) The particular discovery methods described in Section
28 2036.020 for which authorization is being sought.

29 (3) The reasons for perpetuating testimony or preserving
30 evidence.

31 2036.040. (a) If the court determines that all or part of the
32 discovery requested under this chapter may prevent a failure or
33 delay of justice in the event of further proceedings in the action in
34 that court, it shall make an order authorizing that discovery.

35 (b) The order shall identify any witness whose deposition may
36 be taken, and any documents, things, or places that may be
37 inspected, and any person whose physical or mental condition may
38 be examined.

39 (c) Any authorized depositions, inspections, and physical and
40 mental examinations shall then be conducted in accordance with

1 the provisions of this title relating to these methods of discovery
2 in a pending action.

3 2036.050. If a deposition to perpetuate testimony has been
4 taken under the provisions of this chapter, it may be used in any
5 later proceeding in accordance with Section 2025.620.

6 SEC. 24. Section 2093 of the Code of Civil Procedure is
7 amended to read:

8 2093. (a) Every court, every judge, or clerk of any court,
9 every justice, and every notary public, and every officer or person
10 authorized to take testimony in any action or proceeding, or to
11 decide upon evidence, has the power to administer oaths or
12 affirmations.

13 (b) (1) Every shorthand reporter certified pursuant to Article
14 3 (commencing with Section 8020) of Chapter 13 of Division 3 of
15 the Business and Professions Code has the power to administer
16 oaths or affirmations and may perform the duties of the deposition
17 officer pursuant to ~~Section 2025~~ *Chapter 9 (commencing with*
18 *Section 2025.010) of Title 4*. The certified shorthand reporter shall
19 be entitled to receive fees for services rendered during a
20 deposition, including fees for deposition services, as specified in
21 subdivision (c) of Section 8211 of the Government Code.

22 (2) This subdivision shall also apply to depositions taken by
23 telephone or other remote electronic means as specified in
24 ~~Sections 2017 and 2025~~ *Chapter 2 (commencing with Section*
25 *2017.010), Chapter 3 (commencing with Section 2017.710), and*
26 *Chapter 9 (commencing with Section 2025.010) of Title 4*.

27 (c) A former judge or justice of a court of record in this state
28 who retired or resigned from office, other than a judge or justice
29 who was retired by the Supreme Court for disability, shall have the
30 power to administer oaths or affirmations, if the former judge or
31 justice requests and receives a certification from the Commission
32 on Judicial Performance that there was no formal disciplinary
33 proceeding pending at the time of retirement or resignation. Where
34 no formal disciplinary proceeding was pending at the time of
35 retirement or resignation, the Commission on Judicial
36 Performance shall issue the certification.

37 No law, rule, or regulation regarding the confidentiality of
38 proceedings of the Commission on Judicial Performance shall be
39 construed to prohibit the Commission on Judicial Performance
40 from issuing a certificate as provided for in this section.



SEC. 25. Section 45312 of the Education Code is amended to read:

45312. The commission may authorize a hearing officer or other representative to conduct any hearing or investigation which the commission itself is authorized by this article to conduct. Any such authorized person conducting such hearing or investigation may administer oaths, subpoena and require the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses to be taken in the manner prescribed by law for like depositions in civil cases in the superior court of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the Code of Civil Procedure. The commission may instruct such authorized representative to present findings or recommendations. The commission may accept, reject or amend any of the findings or recommendations of the said authorized representative. Any rejection or amendment of findings or recommendations shall be based either on a review of the transcript of the hearing or investigation or upon the results of such supplementary hearing or investigation as the commission may order.

The commission may employ by contract or as professional experts or otherwise any such hearing officers or other representatives and may adopt and amend such rules and procedures as may be necessary to effectuate this section.

SEC. 26. Section 87675 of the Education Code is amended to read:

87675. The arbitrator shall conduct proceedings in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that the right of discovery of the parties shall not be limited to those matters set forth in Section 11507.6 of the Government Code but shall include the rights and duties of any party in a civil action brought in a superior court under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the Code of Civil Procedure. In all cases, discovery shall be completed prior to one week before the date set for hearing. The arbitrator shall determine whether there is cause to dismiss or penalize the employee. If the arbitrator finds cause, the arbitrator shall determine whether the employee shall be dismissed, the precise penalty to be imposed, and whether the

1 decision should be imposed immediately or postponed pursuant to
2 Section 87672.

3 No witness shall be permitted to testify at the hearing except
4 upon oath or affirmation. No testimony shall be given or evidence
5 introduced relating to matters that occurred more than four years
6 prior to the date of the filing of the notice. Evidence of records
7 regularly kept by the governing board concerning the employee
8 may be introduced, but no decision relating to the dismissal or
9 suspension of any employee shall be made based on charges or
10 evidence of any nature relating to matters occurring more than four
11 years prior to the filing of the notice.

12 SEC. 27. Section 87679 of the Education Code is amended to
13 read:

14 87679. The administrative law judge shall conduct
15 proceedings in accordance with Chapter 5 (commencing with
16 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
17 Code, except that the right of discovery of the parties shall not be
18 limited to those matters set forth in Section 11507.6 of the
19 Government Code but shall include the rights and duties of any
20 party in a civil action brought in a superior court under ~~Article 3~~
21 ~~(commencing with Section 2016) of Chapter 3 of Title 4~~
22 ~~(commencing with Section 2016.010) of Part 4 of the Code of Civil~~
23 ~~Procedure. In all cases, discovery shall be completed prior to one~~
24 ~~week before the date set for hearing. The written notice delivered~~
25 ~~to the employee pursuant to Section 87672 shall be deemed an~~
26 ~~accusation. The written objection of the employee delivered~~
27 ~~pursuant to Section 87673 shall be deemed the notice of defense.~~

28 SEC. 28. Section 88131 of the Education Code is amended to
29 read:

30 88131. The commission may authorize a hearing officer or
31 other representative to conduct any hearing or investigation which
32 the commission itself is authorized by this article to conduct. Any
33 such authorized person conducting such hearing or investigation
34 may administer oaths, subpoena and require the attendance of
35 witnesses and the production of books or papers, and cause the
36 depositions of witnesses to be taken in the manner prescribed by
37 law for like depositions in civil cases in the superior court of this
38 state under ~~Article 3 (commencing with Section 2016) of Chapter~~
39 ~~3 of Title 4 (commencing with Section 2016.010) of Part 4 of the~~
40 ~~Code of Civil Procedure. The commission may instruct such~~

1 authorized representative to present findings or recommendations.
2 The commission may accept, reject or amend any of the findings
3 or recommendations of the said authorized representative. Any
4 rejection or amendment of findings or recommendations shall be
5 based either on a review of the transcript of the hearing or
6 investigation or upon the results of such supplementary hearing or
7 investigation as the commission may order.

8 The commission may employ by contract or as professional
9 experts or otherwise any such hearing officers or other
10 representatives and may adopt and amend such rules and
11 procedures as may be necessary to effectuate this section.

12 SEC. 29. Section 915 of the Evidence Code is amended to
13 read:

14 915. (a) Subject to subdivision (b), the presiding officer may
15 not require disclosure of information claimed to be privileged
16 under this division or attorney work product under subdivision ~~(e)~~
17 ~~(a)~~ of Section ~~2018~~ 2018.030 of the Code of Civil Procedure in
18 order to rule on the claim of privilege; provided, however, that in
19 any hearing conducted pursuant to subdivision (c) of Section 1524
20 of the Penal Code in which a claim of privilege is made and the
21 court determines that there is no other feasible means to rule on the
22 validity of the claim other than to require disclosure, the court shall
23 proceed in accordance with subdivision (b).

24 (b) When a court is ruling on a claim of privilege under Article
25 9 (commencing with Section 1040) of Chapter 4 (official
26 information and identity of informer) or under Section 1060 (trade
27 secret) or under subdivision (b) of Section ~~2018~~ 2018.030 of the
28 Code of Civil Procedure (attorney work product) and is unable to
29 do so without requiring disclosure of the information claimed to
30 be privileged, the court may require the person from whom
31 disclosure is sought or the person authorized to claim the privilege,
32 or both, to disclose the information in chambers out of the presence
33 and hearing of all persons except the person authorized to claim the
34 privilege and any other persons as the person authorized to claim
35 the privilege is willing to have present. If the judge determines that
36 the information is privileged, neither the judge nor any other
37 person may ever disclose, without the consent of a person
38 authorized to permit disclosure, what was disclosed in the course
39 of the proceedings in chambers.

1 SEC. 30. Section 1156 of the Evidence Code is amended to
2 read:

3 1156. (a) In-hospital medical or medical-dental staff
4 committees of a licensed hospital may engage in research and
5 medical or dental study for the purpose of reducing morbidity or
6 mortality, and may make findings and recommendations relating
7 to such purpose. Except as provided in subdivision (b), the written
8 records of interviews, reports, statements, or memoranda of such
9 in-hospital medical or medical-dental staff committees relating to
10 such medical or dental studies are subject to ~~Sections 2016 to 2036,~~
11 ~~inclusive, Title 4 (commencing with Section 2016.010) of Part 4~~
12 of the Code of Civil Procedure (relating to discovery proceedings)
13 but, subject to subdivisions (c) and (d), shall not be admitted as
14 evidence in any action or before any administrative body, agency,
15 or person.

16 (b) The disclosure, with or without the consent of the patient,
17 of information concerning him to such in-hospital medical or
18 medical-dental staff committee does not make unprivileged any
19 information that would otherwise be privileged under Section 994
20 or 1014; but, notwithstanding Sections 994 and 1014, such
21 information is subject to discovery under subdivision (a) except
22 that the identity of any patient may not be discovered under
23 subdivision (a) unless the patient consents to such disclosure.

24 (c) This section does not affect the admissibility in evidence of
25 the original medical or dental records of any patient.

26 (d) This section does not exclude evidence which is relevant
27 evidence in a criminal action.

28 SEC. 31. Section 1156.1 of the Evidence Code is amended to
29 read:

30 1156.1. (a) A committee established in compliance with
31 Sections 4070 and 5624 of the Welfare and Institutions Code may
32 engage in research and medical or psychiatric study for the
33 purpose of reducing morbidity or mortality, and may make
34 findings and recommendations to the county and state relating to
35 such purpose. Except as provided in subdivision (b), the written
36 records of interviews, reports, statements, or memoranda of such
37 committees relating to such medical or psychiatric studies are
38 subject to ~~Sections 2016 to 2036, inclusive, Title 4 (commencing~~
39 ~~with Section 2016.010) of Part 4~~ of the Code of Civil Procedure
40 but, subject to subdivisions (c) and (d), shall not be admitted as

1 evidence in any action or before any administrative body, agency,
2 or person.

3 (b) The disclosure, with or without the consent of the patient,
4 of information concerning him or her to such committee does not
5 make unprivileged any information that would otherwise be
6 privileged under Section 994 or 1014. However, notwithstanding
7 Sections 994 and 1014, such information is subject to discovery
8 under subdivision (a) except that the identity of any patient may
9 not be discovered under subdivision (a) unless the patient consents
10 to such disclosure.

11 (c) This section does not affect the admissibility in evidence of
12 the original medical or psychiatric records of any patient.

13 (d) This section does not exclude evidence which is relevant
14 evidence in a criminal action.

15 SEC. 32. Section 1560 of the Evidence Code is amended to
16 read:

17 1560. (a) As used in this article:

18 (1) "Business" includes every kind of business described in
19 Section 1270.

20 (2) "Record" includes every kind of record maintained by a
21 business.

22 (b) Except as provided in Section 1564, when a subpoena duces
23 tecum is served upon the custodian of records or other qualified
24 witness of a business in an action in which the business is neither
25 a party nor the place where any cause of action is alleged to have
26 arisen, and the subpoena requires the production of all or any part
27 of the records of the business, it is sufficient compliance therewith
28 if the custodian or other qualified witness, within five days after
29 the receipt of the subpoena in any criminal action or within the
30 time agreed upon by the party who served the subpoena and the
31 custodian or other qualified witness, or within 15 days after the
32 receipt of the subpoena in any civil action or within the time agreed
33 upon by the party who served the subpoena and the custodian or
34 other qualified witness, delivers by mail or otherwise a true,
35 legible, and durable copy of all the records described in the
36 subpoena to the clerk of the court ~~or to the judge if there be no clerk~~
37 ~~or to another person described in subdivision (e) (d) of Section~~
38 ~~2026 2026.010~~ of the Code of Civil Procedure, together with the
39 affidavit described in Section 1561.

(c) The copy of the records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

(1) If the subpoena directs attendance in court, to the clerk of the court, ~~or to the judge thereof if there be no clerk.~~

(2) If the subpoena directs attendance at a deposition, to the officer before whom the deposition is to be taken, at the place designated in the subpoena for the taking of the deposition or at the officer's place of business.

(3) In other cases, to the officer, body, or tribunal conducting the hearing, at a like address.

(d) Unless the parties to the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to a witness who is to appear personally, the copy of the records shall remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition, or hearing. Records which are original documents and which are not introduced in evidence or required as part of the record shall be returned to the person or entity from whom received. Records which are copies may be destroyed.

(e) As an alternative to the procedures described in subdivisions (b), (c), and (d), the subpoenaing party may direct the witness to make the records available for inspection or copying by the party's attorney, the attorney's representative, or deposition officer as described in ~~paragraph (3) of subdivision (d) of~~ Section 2020.420 of the Code of Civil Procedure, at the witness' business address under reasonable conditions during normal business hours. Normal business hours, as used in this subdivision, means those hours that the business of the witness is normally open for business to the public. When provided with at least five business days' advance notice by the party's attorney, attorney's representative, or deposition officer, the witness shall designate a time period of not less than six continuous hours on a date certain for copying of records subject to the subpoena by the party's attorney, attorney's representative or deposition officer. It shall be the responsibility of the attorney's representative to deliver any

1 copy of the records as directed in the subpoena. Disobedience to
2 the deposition subpoena issued pursuant to this subdivision is
3 punishable as provided in ~~subdivision (h) of Section 2020~~
4 ~~2020.240~~ of the Code of Civil Procedure.

5 SEC. 33. Section 3110.5 of the Family Code is amended to
6 read:

7 3110.5. (a) No person shall be a court-connected or private
8 child custody evaluator under this chapter unless the person has
9 completed the domestic violence and child abuse training program
10 described in Section 1816 and has complied with Rules 1257.3 and
11 1257.7 of the California Rules of Court.

12 (b) (1) On or before January 1, 2002, the Judicial Council shall
13 formulate a statewide rule of court that establishes education,
14 experience, and training requirements for all child custody
15 evaluators appointed pursuant to this chapter, Section 730 of the
16 Evidence Code, or ~~Section 2032 Chapter 15 (commencing with~~
17 ~~Section 2032.010) of Title 4 of Part 4~~ of the Code of Civil
18 Procedure.

19 (A) The rule shall require a child custody evaluator to declare
20 under penalty of perjury that he or she meets all of the education,
21 experience, and training requirements specified in the rule and, if
22 applicable, possesses a license in good standing. The Judicial
23 Council shall establish forms to implement this section. The rule
24 shall permit court-connected evaluators to conduct evaluations if
25 they meet all of the qualifications established by the Judicial
26 Council. The education, experience, and training requirements to
27 be specified for court-connected evaluators shall include, but shall
28 not be limited to, knowledge of the psychological and
29 developmental needs of children and parent-child relationships.

30 (B) The rule shall require all evaluators to utilize comparable
31 interview, assessment, and testing procedures for all parties that
32 are consistent with generally accepted clinical, forensic, scientific,
33 diagnostic, or medical standards. The rule shall also require
34 evaluators to inform each adult party of the purpose, nature, and
35 method of the evaluation.

36 (C) The rule may allow courts to permit the parties to stipulate
37 to an evaluator of their choosing with the approval of the court
38 under the circumstances set forth in subdivision (d). The rule may
39 require courts to provide general information about how parties
40 can contact qualified child custody evaluators in their county.

(2) On or before January 1, 2004, the Judicial Council shall include in the statewide rule of court created pursuant to this section a requirement that all court-connected and private child custody evaluators receive training in the nature of child sexual abuse. The Judicial Council shall develop standards for this training that shall include, but not be limited to, the following:

(A) Children's patterns of hiding and disclosing sexual abuse occurring in a family setting.

(B) The effects of sexual abuse on children.

(C) The nature and extent of child sexual abuse.

(D) The social and family dynamics of child sexual abuse.

(E) Techniques for identifying and assisting families affected by child sexual abuse.

(F) Legal rights, protections, and remedies available to victims of child sexual abuse.

(c) In addition to the education, experience, and training requirements established by the Judicial Council pursuant to subdivision (b), on or after January 1, 2005, no person shall be a child custody evaluator under this chapter, Section 730 of the Evidence Code, or ~~Section 2032~~ *Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4* of the Code of Civil Procedure unless the person meets one of the following criteria:

(1) He or she is licensed as a physician under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and either is a board certified psychiatrist or has completed a residency in psychiatry.

(2) He or she is licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(3) He or she is licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(4) He or she is licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(5) He or she is a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council pursuant to subdivision (b).

(d) Subdivision (c) shall not apply in any case where the court determines that there are no evaluators who meet the criteria of subdivision (c) who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties may stipulate to an individual who does not meet the criteria of subdivision (c), subject to approval by the court.

(e) A child custody evaluator who is licensed by the Medical Board of California, the Board of Psychology, or the Board of Behavioral Sciences shall be subject to disciplinary action by that board for unprofessional conduct, as defined in the licensing law applicable to that licensee.

(f) On or after January 1, 2005, a court-connected or private child custody evaluator shall not evaluate, investigate, or mediate an issue of child custody in a proceeding pursuant to this division unless that person has completed child sexual abuse training as required by this section.

SEC. 34. Section 3666 of the Family Code is amended to read:

3666. This article may be enforced in the manner specified in Sections 1991, 1991.1, 1991.2, 1992, and 1993 of the Code of Civil Procedure and in the Civil Discovery Act of 1986 (~~Article 3 commencing with Section 2016~~) of Chapter 3 of Title 3 (~~Title 4 commencing with Section 2016.010~~) of Part 4 of the Code of Civil Procedure), and any other statutes applicable to the enforcement of procedures for discovery.

SEC. 35. Section 4331 of the Family Code is amended to read:

4331. (a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

(c) A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to ~~Section 2032 Chapter 15 (commencing with Section 2032.010)~~ of Title 4 of Part 4 of the Code of Civil Procedure.

(d) “Vocational training counselor” for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in vocational training under Section 720 of the Evidence Code.

(e) A vocational training counselor shall have at least the following qualifications:

(1) A master’s degree in the behavioral sciences.

(2) Be qualified to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(f) The court may order the supporting spouse to pay, in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education.

SEC. 36. Section 309 of the Fish and Game Code is amended to read:

309. (a) The commission or any person appointed by it to conduct a hearing may, in any investigation or hearing, cause the deposition of witnesses, residing within or without the state, to be taken in the manner prescribed by law for deposition in civil actions in the superior courts of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, and may compel the attendance of witnesses and the production of documents and papers. The commission shall adopt regulations that afford procedural and substantive due process to

1 any person whose license or permit is subject to revocation or
 2 suspension. Except upon conviction of a violation of this code or
 3 a regulation adopted pursuant to this code relating to the licensed
 4 or permitted activity and notwithstanding any other provision of
 5 this code, the commission shall not revoke or suspend any license
 6 or permit until the regulations required by this section have been
 7 adopted and approved by the Office of Administrative Law
 8 pursuant to Chapter 3.5 (commencing with Section 11340) of Part
 9 1 of Division 3 of Title 2 of the Government Code.

10 (b) Any deliberation conducted by the commission, or
 11 conducted by any person appointed by the commission to conduct
 12 hearings, is deemed to be a proceeding required to be conducted
 13 pursuant to Chapter 5 (commencing with Section 11500) of Part
 14 1 of Division 3 of Title 2 of the Government Code or similar
 15 provision, within the meaning of paragraph (3) of subdivision (c)
 16 of Section 11126 of the Government Code.

17 SEC. 37. Section 5934 of the Fish and Game Code is amended
 18 to read:

19 5934. The commission or any party may, in any hearing, cause
 20 the deposition of witnesses to be taken in the manner prescribed
 21 by law for depositions in civil actions in the superior courts of this
 22 state under ~~Article 3 (commencing with Section 2016) of Chapter~~
 23 ~~3 of Title 4 (commencing with Section 2016.010) of Part 4 of the~~
 24 Code of Civil Procedure.

25 SEC. 38. Section 6276.04 of the Government Code is
 26 amended to read:

27 6276.04. Aeronautics Act, reports of investigations and
 28 hearings, Section 21693, Public Utilities Code.

29 Agricultural producers marketing, access to records, Section
 30 59616, Food and Agricultural Code.

31 Aiding disabled voters, Section 14282, Elections Code.

32 Air pollution data, confidentiality of trade secrets, Section
 33 6254.7, Government Code, and Sections 42303.2 and 43206,
 34 Health and Safety Code.

35 Air toxics emissions inventory plans, protection of trade secrets,
 36 Section 44346, Health and Safety Code.

37 Alcohol and drug abuse records and records of communicable
 38 diseases, confidentiality of, Section 123125, Health and Safety
 39 Code.

1 Apiary registration information, confidentiality of, Section
2 29041, Food and Agricultural Code.
3 Arrest not resulting in conviction, disclosure or use of records,
4 Sections 432.7 and 432.8, Labor Code.
5 Arsonists, registered, confidentiality of certain information,
6 Section 457.1, Penal Code.
7 Artificial insemination, donor not natural father, confidentiality
8 of records, Section 7613, Family Code.
9 Assessor's records, confidentiality of information in, Section
10 408, Revenue and Taxation Code.
11 Assessor's records, confidentiality of information in, Section
12 451, Revenue and Taxation Code.
13 Assessor's records, display of documents relating to business
14 affairs or property of another, Section 408.2, Revenue and
15 Taxation Code.
16 Assigned risk plans, rejected applicants, confidentiality of
17 information, Section 11624, Insurance Code.
18 Attorney applicant, investigation by State Bar, confidentiality
19 of, Section 6060.2, Business and Professions Code.
20 Attorney-client confidential communication, Section 6068,
21 Business and Professions Code and Sections 952, 954, 956, 956.5,
22 957, 958, 959, 960, 961, and 962, Evidence Code.
23 Attorney, disciplinary proceedings, confidentiality prior to
24 formal proceedings, Section 6086.1, Business and Professions
25 Code.
26 Attorney, disciplinary proceeding, State Bar access to
27 nonpublic court records, Section 6090.6, Business and Professions
28 Code.
29 Attorney, investigation by State Bar, confidentiality of, Section
30 6168, Business and Professions Code.
31 Attorney, law corporation, investigation by State Bar,
32 confidentiality of, Section 6168, Business and Professions Code.
33 Attorney, State Bar survey information, confidentiality of,
34 Section 6033, Business and Professions Code.
35 Attorney work product confidentiality in administrative
36 adjudication, Section 11507.6, Government Code.
37 Attorney, work product, confidentiality of, Section 6202,
38 Business and Professions Code.



Attorney work product, discovery, ~~Section 2018~~, Chapter 4 (commencing with Section 2018.010), of Title 4, of Part 4 of the Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1, Government Code.

Auditor General, disclosure of audit records, Section 10525, Government Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Automotive repair facility, fact of certification or decertification, Section 9889.47, Business and Professions Code.

Automotive repair facility, notice of intent to seek certification, Section 9889.33, Business and Professions Code.

Avocado handler transaction records, confidentiality of, Sections 44982 and 44984, Food and Agricultural Code.

SEC. 39. Section 11045 of the Government Code is amended to read:

11045. (a) (1) Whenever a state agency requests the consent of the Attorney General to employ outside counsel, as required by Section 11040, the state agency shall within five business days of the date the request is transmitted to the Attorney General provide the designated representative of State Employees Bargaining Unit 2 with written notification of the request. The notice shall include the items enumerated in subdivision (d).

(2) All state agencies, other than the office of the Attorney General, that are not required to obtain the consent required by subdivision (c) of Section 11040, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five business days prior to execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside counsel, the state agency shall provide the written notice no later than five business days after the contract with outside counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside legal counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to

1 the designated representative of State Employees Bargaining Unit
2 2 within 10 days of that determination. The notice shall include the
3 items enumerated in subdivision (d).

4 (b) The Attorney General shall provide the designated
5 representative of State Employees Bargaining Unit 2 with a
6 written report, at least monthly, of all consents granted to every
7 state agency pursuant to Section 11040.

8 (c) Notwithstanding the above notice requirements, whenever
9 any state agency submits a proposed contract for outside counsel
10 to the Department of General Services pursuant to Section 10335
11 of the Public Contract Code, the agency shall provide a copy of the
12 contract to the designated representative of State Employees
13 Bargaining Unit 2.

14 (d) “Written notice” within the meaning of this section shall
15 include, but not be limited to, all of the following:

16 (1) A copy of the complaint or other pleadings, if any, that gave
17 rise to the litigation or matter for which a contract is being sought,
18 or other identifying information.

19 (2) The justification for the contract, pursuant to subdivision
20 (b) of Section 19130.

21 (3) The nature of the legal services to be performed.

22 (4) The estimated hourly wage to be paid under the contract.

23 (5) The estimated length of the contract.

24 (6) The identity of the person or entity that is entering into the
25 contract with the state.

26 (e) “State agency,” as used in this section, means every state
27 office, department, division, bureau, board, or commission,
28 including the Board of Directors of the State Compensation
29 Insurance Fund, but does not include the Regents of the University
30 of California, the Trustees of the California State University, the
31 Legislature, the courts, or any agency in the judicial branch of
32 government.

33 (f) (1) The notice requirements of this section do not apply to
34 contracts for expert witnesses or consultations in connection with
35 a confidential investigation or to any confidential component of a
36 pending or active legal action.

37 (2) The exemption authorized in paragraph (1) shall only apply
38 as long as necessary to protect the confidentiality of the
39 investigation or the confidential component of a pending or active
40 legal action.

(3) Disclosures made pursuant to this section are deemed to be privileged communications for purposes of subdivision (c) of Section 912 of the Evidence Code, and shall not be construed to be a waiver of any privilege or exemption provided by law, including, but not limited to, the lawyer-client privilege, as described in Section 952 of the Evidence Code, or attorney work product, as described in ~~Section 2018~~ *Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4* of the Code of Civil Procedure.

(g) If the provisions of this section are in conflict with the provisions of a memorandum of understanding or other written agreement reached pursuant to Section 3517 or 3517.5, the memorandum of understanding or agreement shall be controlling without further legislative action, except that if any provision of the memorandum of understanding or other agreement requires the expenditure of funds, the provisions may not become effective unless approved by the Legislature.

SEC. 40. Section 11187 of the Government Code is amended to read:

11187. (a) Except as provided in subdivision (c), if any witness refuses to answer any interrogatory or to attend or testify or produce or permit the inspection or copying of any papers or other items described in subdivision (e) of Section 11181 required by subpoena, the head of the department may petition the superior court in the county in which the hearing or investigation is pending or the county in which testimony is designated in the subpoena to be given or documents or other items are designated in the subpoena to be produced, for an order compelling the person to answer the interrogatories or to attend and testify or produce and permit the inspection and copying of the papers or other items required by the subpoena before the officer named in the subpoena.

(b) The petition shall set forth all of the following:

(1) That due notice of the time and place for answering the interrogatories or testifying or the attendance of the person or the production of the papers or other items described in subdivision (e) of Section 11181 was given.

(2) That the person was subpoenaed or required to answer interrogatories in the manner prescribed in this article.

(3) That the person failed and refused to answer the interrogatories or to attend or testify or produce or permit the

1 inspection or copying of the papers or other items required by
2 subpoena before the officer in the cause or proceeding named in
3 the subpoena, or has refused to answer questions propounded to
4 him or her in the course of the investigation or hearing.

5 (c) If the witness named in the subpoena does not reside or
6 conduct business in this state, the department head may seek to
7 compel the witness' testimony and production, inspection, and
8 copying of documents or other items described in subdivision (e)
9 of Section 11181 in the manner provided for the enforcement of
10 a deposition notice to a nonparty as described in Section 2026 or
11 2027 2026.010 or 2027.010 of the Code of Civil Procedure or in
12 any other manner authorized by any law.

13 (d) If any witness objects and based on that objection refuses
14 to answer any interrogatory or to attend or testify or produce or
15 permit the inspection or copying of any papers or other items
16 described in subdivision (e) of Section 11181 as required by a
17 subpoena, the witness shall state the objection and the validity of
18 the objection shall be determined exclusively in a proceeding
19 brought by the head of the department to compel compliance as
20 provided in this section.

21 SEC. 41. Section 11189 of the Government Code is amended
22 to read:

23 11189. In any matter pending before a department head, the
24 department head may cause the deposition of persons residing
25 within or without the state to be taken by causing a petition to be
26 filed in the Superior Court in the County of Sacramento reciting
27 the nature of the matter pending, the name and residence of the
28 person whose testimony is desired, and asking that an order be
29 made requiring the person to appear and testify before an officer
30 named in the petition for that purpose. Upon the filing of the
31 petition the court may make an order requiring the person to appear
32 and testify in the manner prescribed by law for like depositions in
33 civil actions in the superior courts of this state under ~~Article 3~~
34 ~~(commencing with Section 2016) of Chapter 3 of Title 4~~
35 ~~(commencing with Section 2016.010) of Part 4 of the Code of Civil~~
36 Procedure. In the same manner the superior courts may compel the
37 attendance of persons as witnesses, and the production of papers,
38 books, accounts, and documents, under Chapter 2 (commencing
39 with Section 1985) of Title 3 of Part 4 of the Code of Civil
40 Procedure, and may punish for contempt.

SEC. 42. Section 11511 of the Government Code is amended to read:

11511. On verified petition of any party, an administrative law judge or, if an administrative law judge has not been appointed, an agency may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the Code of Civil Procedure. The petition shall set forth the nature of the pending proceeding; the name and address of the witness whose testimony is desired; a showing of the materiality of the testimony; a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. The petitioner shall serve notice of hearing and a copy of the petition on the other parties at least 10 days before the hearing. Where the witness resides outside the state and where the administrative law judge or agency has ordered the taking of the testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the superior court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189.

SEC. 43. Section 12972 of the Government Code is amended to read:

12972. (a) The commission shall conduct all actions and procedures in accordance with either of the following:

(1) Chapter 5 (commencing with Section 11500) of Part 1, except as otherwise specified by this part.

(2) Regulations adopted by the commission.

(b) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~ of Part 4 of the Code of Civil Procedure.

SEC. 44. Section 18671 of the Government Code is amended to read:

1 18671. Such hearings and investigations may be conducted by
2 the board, any member, or any authorized representative of the
3 board. Any authorized person conducting such hearing or
4 investigation may administer oaths, subpoena and require the
5 attendance of witnesses and the production of books or papers, and
6 cause the depositions of witnesses residing within or without the
7 state to be taken in the manner prescribed by law for like
8 depositions in civil cases in the superior court of this state under
9 ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title~~
10 ~~4 (commencing with Section 2016.010) of Part 4 of the Code of~~
11 ~~Civil Procedure.~~

12 SEC. 45. Section 68092.5 of the Government Code is
13 amended to read:

14 68092.5. (a) A party requiring testimony before any court,
15 tribunal, or arbiter in any civil action or proceeding from any
16 expert witness, other than a party or employee of a party, who is
17 either, (1) an expert described in ~~paragraph (2) of subdivision (a)~~
18 ~~(b) of Section 2034~~ 2034.210 of the Code of Civil Procedure, (2)
19 a treating physician and surgeon or other treating health care
20 practitioner who is to be asked to express an opinion during the
21 action or proceeding, or (3) an architect, professional engineer, or
22 licensed land surveyor who was involved with the original project
23 design or survey for which he or she is asked to express an opinion
24 within his or her expertise and relevant to the action or proceeding,
25 shall pay the reasonable and customary hourly or daily fee for the
26 actual time consumed in the examination of that witness by any
27 party attending the action or proceeding. The hourly or daily fee
28 shall not exceed the fee charged the party who retained the expert
29 except where the expert donated his or her services to a charitable
30 or other nonprofit organization. A daily fee shall only be charged
31 for a full day of attendance at a deposition or where the expert was
32 required by the deposing party to be available for a full day and the
33 expert necessarily had to forego all business he or she would have
34 otherwise conducted that day but for the request that he or she be
35 available all day for the scheduled deposition.

36 The party requiring the attendance shall either accompany the
37 service of the subpoena or notice with a tender of the expert's fee
38 based on the anticipated length of time the expert is required to
39 remain at such place pursuant to the notice or subpoena or tender
40 that fee at the required time of appearance. The expert's fee shall

1 be delivered to the attorney for the party designating the expert. If
2 the appearance of the expert takes longer than anticipated, the
3 party serving the subpoena or notice shall pay the balance of the
4 expert's fee within five days of receipt of an itemized statement
5 from the expert. The party designating the expert is responsible for
6 any fee charged by the expert for preparing for the testimony and
7 for traveling to the place of the civil action or proceeding, as well
8 as for any travel expenses of the expert, unless otherwise
9 determined by the court.

10 (b) The service of a proper subpoena or notice accompanied by
11 the tender of the expert witness fee described in subdivision (a) is
12 effective to require the party employing or retaining the expert to
13 produce the expert for testimony. If the party serving the notice or
14 subpoena fails to tender the expert's fee under subdivision (a), the
15 expert shall not be required to appear at that time unless the parties
16 stipulate otherwise.

17 (c) If a party requiring the appearance by subpoena or notice of
18 another party's expert witness under this subdivision deems that
19 the hourly or daily fee of that expert for providing testimony is
20 unreasonable, that party may move for an order setting the
21 compensation of that expert. This motion shall be accompanied by
22 a declaration stating facts showing a reasonable and good faith
23 attempt at an informal resolution of each issue presented by the
24 motion. Notice of this motion shall also be given to the expert.

25 In any such attempt at an informal resolution, either the party or
26 the expert shall provide the other with (A) proof of the ordinary
27 and customary fee actually charged and received by that expert for
28 similar services provided outside the subject litigation, (B) the
29 total number of times the presently demanded fee has ever been
30 charged and received by that expert, and (C) the frequency and
31 regularity with which the presently demanded fee has been
32 charged and received by that expert within the two-year period
33 preceding the hearing on the motion. Provisions (B) and (C) shall
34 apply to actions filed after January 1, 1994.

35 In addition to any other facts or evidence, the expert or the party
36 designating the expert shall provide, and the court's determination
37 as to the reasonableness of the fee shall be based upon, (1) proof
38 of the ordinary and customary fee actually charged and received
39 by that expert for similar services provided outside the subject
40 litigation, (2) the total number of times the presently demanded fee

1 has ever been charged and received by that expert, and (3) the
2 frequency and regularity with which the presently demanded and
3 any other fee has been charged and received by that expert within
4 the two-year period preceding the hearing on the motion. The court
5 may also consider (4) the ordinary and customary fees charged by
6 similar experts for similar services within the relevant community,
7 and (5) any other factors the court deems necessary or appropriate
8 to make its determination.

9 Upon a determination that the fee demanded by that expert is
10 unreasonable, and based upon the evidence and factors considered,
11 the court shall set the fee of the expert providing testimony.

12 (d) In the event the proceeding at which the expert witness has
13 been notified his or her attendance is required is continued or
14 canceled in advance of the time for which it is scheduled, such
15 witness shall be notified of the continuance or cancellation by the
16 party requiring his or her attendance by the quickest and most
17 reliable means of giving notice under the circumstances. In the
18 event such party fails to give notice as required by this subdivision,
19 then the expert witness shall be entitled to receive the
20 compensation specified in subdivision (a) of this section,
21 notwithstanding his or her failure to give any testimony.

22 (e) An express contract entered into between a person and the
23 party requesting or requiring the person to testify, relating to
24 compensation, shall be enforceable and shall prevail over the
25 provisions of this section.

26 (f) The deposition of an expert witness is governed by ~~Section~~
27 ~~2034~~ *Chapter 18 (commencing with Section 2034.010) of Title 4*
28 *of Part 4 of the Code of Civil Procedure.*

29 SEC. 46. Section 68616 of the Government Code is amended
30 to read:

31 68616. Delay reduction rules shall not require shorter time
32 periods than as follows:

33 (a) Service of the complaint within 60 days after filing.
34 Exceptions, for longer periods of time, (1) may be granted as
35 authorized by local rule and (2) shall be granted on a showing that
36 service could not reasonably be achieved within the time required
37 with the exercise of due diligence consistent with the amount in
38 controversy.

39 (b) Service of responsive pleadings within 30 days after service
40 of the complaint. The parties may stipulate to an additional 15

1 days. Exceptions, for longer periods of time, may be granted as
2 authorized by local rule.

3 (c) Time for service of notice or other paper under Sections
4 1005 and 1013 of the Code of Civil Procedure and time to plead
5 after service of summons under Section 412.20 of the Code of
6 Civil Procedure shall not be shortened except as provided in those
7 sections.

8 (d) Within 30 days of service of the responsive pleadings, the
9 parties may, by stipulation filed with the court, agree to a single
10 continuance not to exceed 30 days.

11 It is the intent of the Legislature that these stipulations not
12 detract from the efforts of the courts to comply with standards of
13 timely disposition. To this extent, the Judicial Council shall
14 develop statistics that distinguish between cases involving, and not
15 involving, these stipulations.

16 (e) No status conference, or similar event, other than a
17 challenge to the jurisdiction of the court, may be required to be
18 conducted sooner than 30 days after service of the first responsive
19 pleadings, or no sooner than 30 days after expiration of a stipulated
20 continuance, if any, pursuant to subdivision (d).

21 ~~(f) Article 3 (commencing with Section 2016) of Chapter 3 of~~
22 ~~Title 3 - Title 4 (commencing with Section 2016.010) of Part 4 of~~
23 the Code of Civil Procedure shall govern discovery, except in
24 arbitration proceedings.

25 (g) No case may be referred to arbitration prior to 210 days
26 after the filing of the complaint, exclusive of the stipulated period
27 provided for in subdivision (d). No rule adopted pursuant to this
28 article may contravene Sections 638 and 639 of the Code of Civil
29 Procedure.

30 (h) Unnamed (DOE) defendants shall not be dismissed prior to
31 the conclusion of the introduction of evidence at trial, except upon
32 stipulation or motion of the parties.

33 (i) Notwithstanding Section 170.6 of the Code of Civil
34 Procedure, in direct calendar courts, challenges pursuant to that
35 section shall be exercised within 15 days of the party's first
36 appearance. Master calendar courts shall be governed solely by
37 Section 170.6 of the Code of Civil Procedure.

38 (j) This section applies to all cases subject to this article which
39 are filed on or after January 1, 1991.

40 (k) This section shall become operative on January 1, 2004.

1 SEC. 47. Section 5710 of the Labor Code is amended to read:
2 5710. (a) The appeals board, a workers' compensation judge,
3 or any party to the action or proceeding, may, in any investigation
4 or hearing before the appeals board, cause the deposition of
5 witnesses residing within or without the state to be taken in the
6 manner prescribed by law for like depositions in civil actions in the
7 superior courts of this state under ~~Article 3 (commencing with~~
8 ~~Section 2016) of Chapter 3 of Title 4 (commencing with Section~~
9 ~~2016.010)~~ of Part 4 of the Code of Civil Procedure. To that end the
10 attendance of witnesses and the production of records may be
11 required. Depositions may be taken outside the state before any
12 officer authorized to administer oaths. The appeals board or a
13 workers' compensation judge in any proceeding before the
14 appeals board may cause evidence to be taken in other jurisdictions
15 before the agency authorized to hear workers' compensation
16 matters in those other jurisdictions.

17 (b) Where the employer or insurance carrier requests a
18 deposition to be taken of an injured employee, or any person
19 claiming benefits as a dependent of an injured employee, the
20 deponent is entitled to receive in addition to all other benefits:

21 (1) All reasonable expenses of transportation, meals, and
22 lodging incident to the deposition.

23 (2) Reimbursement for any loss of wages incurred during
24 attendance at the deposition.

25 (3) A copy of the transcript of the deposition, without cost.

26 (4) A reasonable allowance for attorney's fees for the
27 deponent, if represented by an attorney licensed by the State Bar
28 of this state. The fee shall be discretionary with, and, if allowed,
29 shall be set by, the appeals board, but shall be paid by the employer
30 or his or her insurer.

31 (5) A reasonable allowance for interpreter's fees for the
32 deponent, if interpretation services are needed and provided by a
33 language interpreter certified or deemed certified pursuant to
34 Article 8 (commencing with Section 11435.05) of Chapter 4.5 of
35 Part 1 of Division 3 of Title 2 of, or Section 68566 of, the
36 Government Code. The fee shall be in accordance with the fee
37 schedule set by the administrative director and paid by the
38 employer or his or her insurer. Payment for interpreter's services
39 shall be allowed for deposition of a non-English-speaking injured

worker, and for any other deposition-related events as permitted by the administrative director.

SEC. 48. Section 6613 of the Labor Code is amended to read:

6613. The appeals board, a hearing officer, or any party to the action or proceeding, may, in any investigation or hearing before the appeals board, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this state under ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure~~. To that end the attendance of witnesses and the production of records may be required. Depositions may be taken outside the state before any officer authorized to administer oaths. The appeals board or a hearing officer in any proceeding before the appeals board may cause evidence to be taken in other jurisdictions before the agency authorized to hear similar matters in such other jurisdictions.

SEC. 49. Section 186.11 of the Penal Code is amended to read:

186.11. (a) (1) Any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), shall be punished, upon conviction of two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which he or she has been convicted, by an additional term of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall be known as the aggravated white collar crime enhancement. The aggravated white collar crime enhancement shall only be imposed once in a single criminal proceeding. For purposes of this section, "pattern of related felony conduct" means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, "two or more related felonies" means felonies committed against two or more separate victims, or against the same victim on two or more separate occasions.

(2) If the pattern of related felony conduct involves the taking of more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be two, three, or five years in the state prison.

(3) If the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the additional term of punishment shall be the term specified in paragraph (1) or (2) of subdivision (a) of Section 12022.6.

(b) (1) The additional prison term and penalties provided for in subdivisions (a), (c), and (d) shall not be imposed unless the facts set forth in subdivision (a) are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(2) The additional prison term provided in paragraph (2) of subdivision (a) shall be in addition to any other punishment provided by law, including Section 12022.6, and shall not be limited by any other provision of law.

(c) Any person convicted of two or more felonies, as specified in subdivision (a), shall also be liable for a fine not to exceed five hundred thousand dollars (\$500,000) or double the value of the taking, whichever is greater, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact. However, if the pattern of related felony conduct involves the taking of more than one hundred thousand dollars (\$100,000), but not more than five hundred thousand dollars (\$500,000), the fine shall not exceed one hundred thousand dollars (\$100,000) or double the value of the taking, whichever is greater.

(d) Any person convicted of two or more felonies, as specified in subdivision (a), shall be liable for the costs of restitution to victims of the pattern of fraudulent or unlawful conduct, if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact.

(e) (1) If a person is alleged to have committed two or more felonies, as specified in subdivision (a), and the aggravated white collar crime enhancement is also charged, any asset or property that is in the control of that person, and any asset or property that has been transferred by that person to a third party, subsequent to the commission of any criminal act alleged pursuant to subdivision

(a), other than in a bona fide purchase, whether found within or outside the state, may be preserved by the superior court in order to pay restitution and fines imposed pursuant to this section. Upon conviction of two or more felonies, as specified in subdivision (a), this property may be levied upon by the superior court to pay restitution and fines imposed pursuant to this section if the existence of facts that would make the person subject to the aggravated white collar crime enhancement have been admitted or found to be true by the trier of fact.

(2) To prevent dissipation or secreting of assets or property, the prosecuting agency may, at the same time as or subsequent to the filing of a complaint or indictment charging two or more felonies, as specified in subdivision (a), and the enhancement specified in subdivision (a), file a petition with the criminal division of the superior court of the county in which the accusatory pleading was filed, seeking a temporary restraining order, preliminary injunction, the appointment of a receiver, or any other protective relief necessary to preserve the property or assets. This petition shall commence a proceeding that shall be pendent to the criminal proceeding and maintained solely to effect the criminal remedies provided for in this section. The proceeding shall not be subject to or governed by the provisions of the Civil Discovery Act of 1986 as set forth in Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 as set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure. The petition shall allege that the defendant has been charged with two or more felonies, as specified in subdivision (a), and is subject to the aggravated white collar crime enhancement specified in subdivision (a). The petition shall identify that criminal proceeding and the assets and property to be affected by an order issued pursuant to this section.

(3) A notice regarding the petition shall be provided, by personal service or registered mail, to every person who may have an interest in the property specified in the petition. Additionally, the notice shall be published for at least three successive weeks in a newspaper of general circulation in the county where the property affected by an order issued pursuant to this section is located. The notice shall state that any interested person may file a verified claim with the superior court stating the nature and amount of their claimed interest. The notice shall set forth the time

1 within which a claim of interest in the protected property is
2 required to be filed.

3 (4) If the property to be preserved is real property, the
4 prosecuting agency shall record, at the time of filing the petition,
5 a lis pendens in each county in which the real property is situated
6 which specifically identifies the property by legal description, the
7 name of the owner of record as shown on the latest equalized
8 assessment roll, and the assessor's parcel number.

9 (5) If the property to be preserved are assets under the control
10 of a banking or financial institution, the prosecuting agency, at the
11 time of the filing of the petition, may obtain an order from the court
12 directing the banking or financial institution to immediately
13 disclose the account numbers and value of the assets of the accused
14 held by the banking or financial institution. The prosecuting
15 agency shall file a supplemental petition, specifically identifying
16 which banking or financial institution accounts shall be subject to
17 a temporary restraining order, preliminary injunction, or other
18 protective remedy.

19 (6) Any person claiming an interest in the protected property
20 may, at any time within 30 days from the date of the first
21 publication of the notice of the petition, or within 30 days after
22 receipt of actual notice, file with the superior court of the county
23 in which the action is pending a verified claim stating the nature
24 and amount of his or her interest in the property or assets. A
25 verified copy of the claim shall be served by the claimant on the
26 Attorney General or district attorney, as appropriate.

27 (7) The imposition of fines and restitution pursuant to this
28 section shall be determined by the superior court in which the
29 underlying criminal offense is sentenced. Any judge who is
30 assigned to the criminal division of the superior court in the county
31 where the petition is filed may issue a temporary restraining order
32 in conjunction with, or subsequent to, the filing of an allegation
33 pursuant to this section. Any subsequent hearing on the petition
34 shall also be heard by a judge assigned to the criminal division of
35 the superior court in the county in which the petition is filed. At
36 the time of the filing of an information or indictment in the
37 underlying criminal case, any subsequent hearing on the petition
38 shall be heard by the superior court judge assigned to the
39 underlying criminal case.



1 (f) Concurrent with or subsequent to the filing of the petition,
2 the prosecuting agency may move the superior court for, and the
3 superior court may issue, the following pendente lite orders to
4 preserve the status quo of the property alleged in the petition:

5 (1) An injunction to restrain any person from transferring,
6 encumbering, hypothecating, or otherwise disposing of that
7 property.

8 (2) Appointment of a receiver to take possession of, care for,
9 manage, and operate the assets and properties so that the property
10 may be maintained and preserved. The court may order that a
11 receiver appointed pursuant to this section shall be compensated
12 for all reasonable expenditures made or incurred by him or her in
13 connection with the possession, care, management, and operation
14 of any property or assets that are subject to the provisions of this
15 section.

16 (3) A bond or other undertaking, in lieu of other orders, of a
17 value sufficient to ensure the satisfaction of restitution and fines
18 imposed pursuant to this section.

19 (g) (1) No preliminary injunction may be granted or receiver
20 appointed by the court without notice that meets the requirements
21 of paragraph (3) of subdivision (e) to all known and reasonably
22 ascertainable interested parties and upon a hearing to determine
23 that an order is necessary to preserve the property pending the
24 outcome of the criminal proceedings. A temporary restraining
25 order may be issued by the court, ex parte, pending that hearing in
26 conjunction with or subsequent to the filing of the petition upon
27 the application of the prosecuting attorney. The temporary
28 restraining order may be based upon the sworn declaration of a
29 peace officer with personal knowledge of the criminal
30 investigation that establishes probable cause to believe that
31 aggravated white collar crime has taken place and that the amount
32 of restitution and fines established by this section exceeds or
33 equals the worth of the assets subject to the temporary restraining
34 order. The declaration may include the hearsay statements of
35 witnesses to establish the necessary facts. The temporary
36 restraining order may be issued without notice upon a showing of
37 good cause to the court.

38 (2) The defendant, or a person who has filed a verified claim as
39 provided in paragraph (6) of subdivision (e), shall have the right
40 to have the court conduct an order to show cause hearing within

1 10 days of the service of the request for hearing upon the
2 prosecuting agency, in order to determine whether the temporary
3 restraining order should remain in effect, whether relief should be
4 granted from any *lis pendens* recorded pursuant to paragraph (4)
5 of subdivision (e), or whether any existing order should be
6 modified in the interests of justice. Upon a showing of good cause,
7 the hearing shall be held within two days of the service of the
8 request for hearing upon the prosecuting agency.

9 (3) In determining whether to issue a preliminary injunction or
10 temporary restraining order in a proceeding brought by a
11 prosecuting agency in conjunction with or subsequent to the filing
12 of an allegation pursuant to this section, the court has the discretion
13 to consider any matter that it deems reliable and appropriate,
14 including hearsay statements, in order to reach a just and equitable
15 decision. The court shall weigh the relative degree of certainty of
16 the outcome on the merits and the consequences to each of the
17 parties of granting the interim relief. If the prosecution is likely to
18 prevail on the merits and the risk of the dissipation of assets
19 outweighs the potential harm to the defendants and the interested
20 parties, the court shall grant injunctive relief. The court shall give
21 significant weight to the following factors:

22 (A) The public interest in preserving the property or assets
23 *pendente lite*.

24 (B) The difficulty of preserving the property or assets *pendente*
25 *lite* where the underlying alleged crimes involve issues of fraud
26 and moral turpitude.

27 (C) The fact that the requested relief is being sought by a public
28 prosecutor on behalf of alleged victims of white collar crimes.

29 (D) The likelihood that substantial public harm has occurred
30 where aggravated white collar crime is alleged to have been
31 committed.

32 (E) The significant public interest involved in compensating
33 the victims of white collar crime and paying court imposed
34 restitution and fines.

35 (4) The court, in making its orders, may consider a defendant's
36 request for the release of a portion of the property affected by this
37 section in order to pay reasonable legal fees in connection with the
38 criminal proceeding, any necessary and appropriate living
39 expenses pending trial and sentencing, and for the purpose of
40 posting bail. The court shall weigh the needs of the public to retain

1 the property against the needs of the defendant to a portion of the
2 property. The court shall consider the factors listed in paragraph
3 (3) prior to making any order releasing property for these
4 purposes.

5 (5) The court, in making its orders, shall seek to protect the
6 interests of any innocent third persons, including an innocent
7 spouse, who were not involved in the commission of any criminal
8 activity.

9 (6) Any petition filed pursuant to this section is part of the
10 criminal proceedings for purposes of appointment of counsel and
11 shall be assigned to the criminal division of the superior court of
12 the county in which the accusatory pleading was filed.

13 (7) Based upon a noticed motion brought by the receiver
14 appointed pursuant to paragraph (2) of subdivision (f), the court
15 may order an interlocutory sale of property named in the petition
16 when the property is liable to perish, to waste, or to be significantly
17 reduced in value, or when the expenses of maintaining the property
18 are disproportionate to the value thereof. The proceeds of the
19 interlocutory sale shall be deposited with the court or as directed
20 by the court pending determination of the proceeding pursuant to
21 this section.

22 (8) The court may make any orders that are necessary to
23 preserve the continuing viability of any lawful business enterprise
24 that is affected by the issuance of a temporary restraining order or
25 preliminary injunction issued pursuant to this action.

26 (9) In making its orders, the court shall seek to prevent any asset
27 subject to a temporary restraining order or preliminary injunction
28 from perishing, spoiling, going to waste, or otherwise being
29 significantly reduced in value. Where the potential for diminution
30 in value exists, the court shall appoint a receiver to dispose of or
31 otherwise protect the value of the property or asset.

32 (10) A preservation order shall not be issued against any assets
33 of a business that are not likely to be dissipated and that may be
34 subject to levy or attachment to meet the purposes of this section.

35 (h) If the allegation that the defendant is subject to the
36 aggravated white collar crime enhancement is dismissed or found
37 by the trier of fact to be untrue, any preliminary injunction or
38 temporary restraining order issued pursuant to this section shall be
39 dissolved. If a jury is the trier of fact, and the jury is unable to reach
40 a unanimous verdict, the court shall have the discretion to continue

1 or dissolve all or a portion of the preliminary injunction or
2 temporary restraining order based upon the interests of justice.
3 However, if the prosecuting agency elects not to retry the case, any
4 preliminary injunction or temporary restraining order issued
5 pursuant to this section shall be dissolved.

6 (i) (1) (A) If the defendant is convicted of two or more
7 felonies, as specified in subdivision (a), and the existence of facts
8 that would make the person subject to the aggravated white collar
9 crime enhancement have been admitted or found to be true by the
10 trier of fact, the trial judge shall continue the preliminary
11 injunction or temporary restraining order until the date of the
12 criminal sentencing and shall make a finding at that time as to what
13 portion, if any, of the property or assets subject to the preliminary
14 injunction or temporary restraining order shall be levied upon to
15 pay fines and restitution to victims of the crime. The order
16 imposing fines and restitution may exceed the total worth of the
17 property or assets subjected to the preliminary injunction or
18 temporary restraining order. The court may order the immediate
19 transfer of the property or assets to satisfy any judgment and
20 sentence made pursuant to this section. Additionally, upon motion
21 of the prosecution, the court may enter an order as part of the
22 judgment and sentence making the order imposing fines and
23 restitution pursuant to this section enforceable pursuant to Title 9
24 (commencing with Section 680.010) of Part 2 of the Code of Civil
25 Procedure.

26 (B) Additionally, the court shall order the defendant to make
27 full restitution to the victim or to make restitution to the victim
28 based on his or her ability to pay, as defined in subdivision (b) of
29 Section 1203.1b. The payment of the restitution ordered by the
30 court pursuant to this section shall be made a condition of any
31 probation granted by the court if the existence of facts that would
32 make the defendant subject to the aggravated white collar crime
33 enhancement have been admitted or found to be true by the trier
34 of fact. Notwithstanding any other provision of law, the court may
35 order that the period of probation continue for up to 10 years or
36 until full restitution is made to the victim, whichever is earlier.

37 (C) The sentencing court shall retain jurisdiction to enforce the
38 order to pay additional fines and restitution and, in appropriate
39 cases, may initiate probation violation proceedings or contempt of

1 court proceedings against a defendant who is found to have
2 willfully failed to comply with any lawful order of the court.

3 (D) If the execution of judgment is stayed pending an appeal of
4 an order of the superior court pursuant to this section, the
5 preliminary injunction or temporary restraining order shall be
6 maintained in full force and effect during the pendency of the
7 appellate period.

8 (2) The order imposing fines and restitution shall not affect the
9 interest in real property of any third party that was acquired prior
10 to the recording of the lis pendens, unless the property was
11 obtained from the defendant other than as a bona fide purchaser for
12 value. If any assets or property affected by this section are subject
13 to a valid lien, mortgage, security interest, or interest under a
14 conditional sales contract and the amount due to the holder of the
15 lien, mortgage, interest, or contract is less than the appraised value
16 of the property, that person may pay to the state or the local
17 government that initiated the proceeding the amount of the
18 difference between the appraised value of the property and the
19 amount of the lien, mortgage, security interest, or interest under a
20 conditional sales contract. Upon that payment, the state or local
21 entity shall relinquish all claims to the property. If the holder of the
22 interest elects not to make that payment to the state or local
23 governmental entity, the interest in the property shall be deemed
24 transferred to the state or local governmental entity and any indicia
25 of ownership of the property shall be confirmed in the state or local
26 governmental entity. The appraised value shall be determined as
27 of the date judgment is entered either by agreement between the
28 holder of the lien, mortgage, security interest, or interest under a
29 conditional sales contract and the governmental entity involved,
30 or if they cannot agree, then by a court-appointed appraiser for the
31 county in which the action is brought. A person holding a valid
32 lien, mortgage, security interest, or interest under a conditional
33 sales contract shall be paid the appraised value of his or her
34 interest.

35 (3) In making its final order, the court shall seek to protect the
36 legitimately acquired interests of any innocent third persons,
37 including an innocent spouse, who were not involved in the
38 commission of any criminal activity.

39 (j) In all cases where property is to be levied upon pursuant to
40 this section, a receiver appointed by the court shall be empowered

1 to liquidate all property or assets which shall be distributed in the
2 following order of priority:

3 (1) To the receiver, or court-appointed appraiser, for all
4 reasonable expenditures made or incurred by him or her in
5 connection with the sale of the property or liquidation of assets,
6 including all reasonable expenditures for any necessary repairs,
7 storage, or transportation of any property levied upon under this
8 section.

9 (2) To any holder of a valid lien, mortgage, or security interest
10 up to the amount of his or her interest in the property or proceeds.

11 (3) To any victim as restitution for any fraudulent or unlawful
12 acts alleged in the accusatory pleading that were proven by the
13 prosecuting agency as part of the pattern of fraudulent or unlawful
14 acts.

15 (4) For payment of any fine imposed pursuant to this section.
16 The proceeds obtained in payment of a fine shall be paid to the
17 treasurer of the county in which the judgment was entered, or if the
18 action was undertaken by the Attorney General, to the Treasurer.
19 If the payment of any fine imposed pursuant to this section
20 involved losses resulting from violation of Section 550 of this code
21 or Section 1871.4 of the Insurance Code, one-half of the fine
22 collected shall be paid to the treasurer of the county in which the
23 judgment was entered, and one-half of the fine collected shall be
24 paid to the Department of Insurance for deposit in the appropriate
25 account in the Insurance Fund. The proceeds from the fine first
26 shall be used by a county to reimburse local prosecutors and
27 enforcement agencies for the reasonable costs of investigation and
28 prosecution of cases brought pursuant to this section.

29 (5) To the Restitution Fund, or in cases involving convictions
30 relating to insurance fraud, to the Insurance Fund as restitution for
31 crimes not specifically pleaded and proven in the accusatory
32 pleading.

33 (k) If, after distribution pursuant to paragraphs (1) and (2) of
34 subdivision (j), the value of the property to be levied upon pursuant
35 to this section is insufficient to pay for restitution and fines, the
36 court shall order an equitable sharing of the proceeds of the
37 liquidation of the property, and any other recoveries, which shall
38 specify the percentage of recoveries to be devoted to each purpose.
39 At least 70 percent of the proceeds remaining after distribution

pursuant to paragraphs (1) and (2) of subdivision (j) shall be devoted to restitution.

(l) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state, except that two separate actions against the same defendant and pertaining to the same fraudulent or unlawful acts may not be brought by a district attorney or the Attorney General pursuant to this section and Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. If a fine is imposed under this section, it shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action.

SEC. 50. Section 1054.6 of the Penal Code is amended to read:

1054.6. Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (e)(a) of Section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision, or are privileged as provided by the Constitution of the United States.

SEC. 51. Section 1524 of the Penal Code is amended to read:
1524. (a) A search warrant may be issued upon any of the following grounds:

- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.
- (4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct

1 of a person under the age of 18 years, in violation of Section
2 311.11, has occurred or is occurring.

3 (6) When there is a warrant to arrest a person.

4 (7) When a provider of electronic communication service or
5 remote computing service has records or evidence, as specified in
6 Section 1524.3, showing that property was stolen or embezzled
7 constituting a misdemeanor, or that property or things are in the
8 possession of any person with the intent to use them as a means of
9 committing a misdemeanor public offense, or in the possession of
10 another to whom he or she may have delivered them for the
11 purpose of concealing them or preventing their discovery.

12 (b) The property or things or person or persons described in
13 subdivision (a) may be taken on the warrant from any place, or
14 from any person in whose possession the property or things may
15 be.

16 (c) Notwithstanding subdivision (a) or (b), no search warrant
17 shall issue for any documentary evidence in the possession or
18 under the control of any person, who is a lawyer as defined in
19 Section 950 of the Evidence Code, a physician as defined in
20 Section 990 of the Evidence Code, a psychotherapist as defined in
21 Section 1010 of the Evidence Code, or a ~~clergyman~~ *member of the*
22 *clergy* as defined in Section 1030 of the Evidence Code, and who
23 is not reasonably suspected of engaging or having engaged in
24 criminal activity related to the documentary evidence for which a
25 warrant is requested unless the following procedure has been
26 complied with:

27 (1) At the time of the issuance of the warrant the court shall
28 appoint a special master in accordance with subdivision (d) to
29 accompany the person who will serve the warrant. Upon service
30 of the warrant, the special master shall inform the party served of
31 the specific items being sought and that the party shall have the
32 opportunity to provide the items requested. If the party, in the
33 judgment of the special master, fails to provide the items
34 requested, the special master shall conduct a search for the items
35 in the areas indicated in the search warrant.

36 (2) If the party who has been served states that an item or items
37 should not be disclosed, they shall be sealed by the special master
38 and taken to court for a hearing.

39 At the hearing, the party searched shall be entitled to raise any
40 issues that may be raised pursuant to Section 1538.5 as well as a

claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a “special master” is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party

1 seeking the order to conduct the search in the manner described in
2 this section in lieu of the special master.

3 (e) Any search conducted pursuant to this section by a special
4 master may be conducted in a manner that permits the party
5 serving the warrant or his or her designee to accompany the special
6 master as he or she conducts his or her search. However, that party
7 or his or her designee shall not participate in the search nor shall
8 he or she examine any of the items being searched by the special
9 master except upon agreement of the party upon whom the warrant
10 has been served.

11 (f) As used in this section, “documentary evidence” includes,
12 but is not limited to, writings, documents, blueprints, drawings,
13 photographs, computer printouts, microfilms, X-rays, files,
14 diagrams, ledgers, books, tapes, audio and video recordings, films
15 or papers of any type or description.

16 (g) No warrant shall issue for any item or items described in
17 Section 1070 of the Evidence Code.

18 (h) Notwithstanding any other law, no claim of attorney work
19 product as described in ~~Section 2018~~ *Chapter 4 (commencing with*
20 *Section 2018.010) of Title 4 of Part 4* of the Code of Civil
21 Procedure shall be sustained where there is probable cause to
22 believe that the lawyer is engaging or has engaged in criminal
23 activity related to the documentary evidence for which a warrant
24 is requested unless it is established at the hearing with respect to
25 the documentary evidence seized under the warrant that the
26 services of the lawyer were not sought or obtained to enable or aid
27 anyone to commit or plan to commit a crime or a fraud.

28 (i) Nothing in this section is intended to limit an attorney’s
29 ability to request an in camera hearing pursuant to the holding of
30 the Supreme Court of California in *People v. Superior Court (Laff)*
31 (2001) 25 Cal.4th 703.

32 (j) In addition to any other circumstance permitting a
33 magistrate to issue a warrant for a person or property in another
34 county, when the property or things to be seized consist of any item
35 or constitute any evidence that tends to show a violation of Section
36 530.5, the magistrate may issue a warrant to search a person or
37 property located in another county if the person whose identifying
38 information was taken or used resides in the same county as the
39 issuing court.

40 SEC. 52. Section 451 of the Probate Code is amended to read:

451. (a) For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

(b) A subpoena issued under subdivision (a) is subject to the provisions of ~~Section 2020~~ Chapter 6 (commencing with Section 2020.010) of Title 4 of Part 4 of the Code of Civil Procedure governing deposition subpoenas.

SEC. 53. Section 452 of the Probate Code is amended to read:

452. (a) The probate referee may:

(1) Examine and take the testimony under oath of a person appearing before the referee.

(2) Require, and issue a subpoena to compel, the person to produce any document in the person's possession or control, concerning the value of any property in the estate.

(b) A subpoena issued under subdivision (a) is subject to the provisions of ~~Section 2020~~ Chapter 6 (commencing with Section 2020.010) of Title 4 of Part 4 of the Code of Civil Procedure governing deposition subpoenas.

SEC. 54. Section 20104.4 of the Public Contract Code is amended to read:

20104.4. The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that

code. The Civil Discovery Act of 1986 (~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure)~~ shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

SEC. 55. Section 3357 of the Public Resources Code is amended to read:

3357. In any proceeding before the director, and in any proceeding instituted by the supervisor for the purpose of enforcing or carrying out the provisions of this division, or for the purpose of holding an investigation to ascertain the condition of any well or wells complained of, or which in the opinion of the supervisor may reasonably be presumed to be improperly located, drilled, operated, maintained, or conducted, the supervisor and the director shall have the power to administer oaths and may apply to a judge of the superior court of the county in which the proceeding or investigation is pending for a subpoena for witnesses to attend the proceeding or investigation. Upon the application of the supervisor or the director, the judge of the superior court shall issue a subpoena directing the witness to attend the proceeding or investigation, and such person shall be required to produce, when directed, all records, surveys, documents, books, or accounts in the witness' custody or under the witness' control;

1 except that no person shall be required to attend upon such
2 proceeding unless the person resides within the same county or
3 within 100 miles of the place of attendance. The supervisor or the
4 director may in such case cause the depositions of witnesses
5 residing within or without the state to be taken in the manner
6 prescribed by law for like depositions in civil actions in superior
7 courts of this state under ~~Article 3 (commencing with Section~~
8 ~~2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~
9 of Part 4 of the Code of Civil Procedure, and may, upon application
10 to a judge of the superior court of the county within which the
11 proceeding or investigation is pending, obtain a subpoena
12 compelling the attendance of witnesses and the production of
13 records, surveys, documents, books, or accounts at such places as
14 the judge may designate within the limits prescribed in this section.

15 SEC. 56. Section 3769 of the Public Resources Code is
16 amended to read:

17 3769. In any proceeding instituted by the supervisor for the
18 purpose of enforcing or carrying out the provisions of this chapter,
19 or for the purpose of holding an investigation to ascertain the
20 condition of any well or wells complained of, or which in the
21 opinion of the supervisor may reasonably be presumed to be
22 improperly located, drilled, operated, maintained, or conducted,
23 the supervisor shall have the power to administer oaths and may
24 apply to a judge of the superior court of the county in which the
25 proceeding or investigation is pending, for a subpoena for
26 witnesses to attend the proceeding or investigation. Upon the
27 application of the supervisor, the judge of the superior court shall
28 issue a subpoena directing the witness to attend the proceeding or
29 investigation, and such person shall be required to produce, when
30 directed, all records, surveys, documents, books, or accounts in the
31 witness' custody or under the witness' control; except that no
32 person shall be required to attend upon such proceeding, unless the
33 person resides within the same county or within 100 miles of the
34 place of attendance.

35 The supervisor may in such case cause the depositions of
36 witnesses residing within or without the state to be taken in the
37 manner prescribed by law for like depositions in civil actions in
38 superior courts of this state under ~~Article 3 (commencing with~~
39 ~~Section 2016) of Chapter 3 of Title 4 (commencing with Section~~
40 ~~2016.010)~~ of Part 4 of the Code of Civil Procedure, and may, upon

1 application to a judge of the superior court of the county within
2 which the proceeding or investigation is pending, obtain a
3 subpoena compelling the attendance of witnesses and the
4 production of records, surveys, documents, books, or accounts at
5 such places as the judge may designate within the limits prescribed
6 in this section.

7 SEC. 57. Section 1794 of the Public Utilities Code is amended
8 to read:

9 1794. The commission or any commissioner or any party
10 may, in any investigation or hearing before the commission, cause
11 the deposition of witnesses residing within or without the state to
12 be taken in the manner prescribed by law for like depositions in
13 civil actions in the superior courts of this state under ~~Article 3~~
14 ~~(commencing with Section 2016) of Chapter 3 of Title 4~~
15 ~~(commencing with Section 2016.010)~~ of Part 4 of the Code of Civil
16 Procedure and to that end may compel the attendance of witnesses
17 and the production of books, waybills, documents, papers, and
18 accounts.

19 SEC. 58. Section 25110 of the Revenue and Taxation Code is
20 amended to read:

21 25110. (a) Notwithstanding Section 25101, a qualified
22 taxpayer, as defined in paragraph (2) of subdivision (b), that is
23 subject to the tax imposed under this part, may elect to determine
24 its income derived from or attributable to sources within this state
25 pursuant to a water's-edge election in accordance with the
26 provisions of this part, as modified by this article. A taxpayer that
27 makes a water's-edge election shall take into account the income
28 and apportionment factors of the following affiliated entities only:

29 (1) Domestic international sales corporations, as described in
30 Sections 991 to 994, inclusive, of the Internal Revenue Code and
31 foreign sales corporations as described in Sections 921 to 927,
32 inclusive, of the Internal Revenue Code.

33 (2) Any corporation (other than a bank), regardless of the place
34 where it is incorporated if the average of its property, payroll, and
35 sales factors within the United States is 20 percent or more.

36 (3) Corporations that are incorporated in the United States,
37 excluding corporations making an election pursuant to Sections
38 931 to 936, inclusive, of the Internal Revenue Code, of which more
39 than 50 percent of their voting stock is owned or controlled directly
40 or indirectly by the same interests.

(4) A corporation that is not described in paragraphs (1) to (3), inclusive, or paragraph (5), but only to the extent of its income derived from or attributable to sources within the United States and its factors assignable to a location within the United States in accordance with paragraph (3) of subdivision (b). Income of that corporation derived from or attributable to sources within the United States as determined by federal income tax laws shall be limited to and determined from the books of account maintained by the corporation with respect to its activities conducted within the United States.

(5) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(6) Any affiliated corporation which is a “controlled foreign corporation,” as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code (“Subpart F income”). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the “Subpart F income” of that corporation for that taxable year and the denominator of which is the “earnings and profits” of that corporation for that taxable year, as defined in Section 964 of the Internal Revenue Code.

(7) (A) The income and factors of the above-enumerated corporations shall be taken into account only if the income and factors would have been taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a corporation that is not described in paragraphs (1) to (3), inclusive, and paragraph (5) and that is an electing taxpayer under this subdivision shall be taken into account in determining its income only to the extent set forth in paragraph (4).

(b) For purposes of this article and Section 24411:

(1) An “affiliated corporation” means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) A “qualified taxpayer” means a corporation which does both of the following:

1 (A) Files with the state tax return on which the water's-edge
2 election is made a consent to the taking of depositions at the time
3 and place most reasonably convenient to all parties from key
4 domestic corporate individuals and to the acceptance of subpoenas
5 duces tecum requiring reasonable production of documents to the
6 Franchise Tax Board as provided in Section 19504 or by the State
7 Board of Equalization as provided in Title 18, California Code of
8 Regulations, Section 5005, or by the courts of this state as provided
9 in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4
10 of, and ~~Section 2025 of Chapter 9 (commencing with Section~~
11 ~~2025.010) of Title 4 of Part 4 of,~~ the Code of Civil Procedure. The
12 consent relates to issues of jurisdiction and service and does not
13 waive any defenses a taxpayer may otherwise have. The consent
14 shall remain in effect so long as the water's-edge election is in
15 effect and shall be limited to providing that information necessary
16 to review or to adjust income or deductions in a manner authorized
17 under Sections 482, 861, Subpart F of Part III of Subchapter N, or
18 similar provisions of the Internal Revenue Code, together with the
19 regulations adopted pursuant to those provisions, and for the
20 conduct of an investigation with respect to any unitary business in
21 which the taxpayer may be involved.

22 (B) Agrees that for purposes of this article, dividends received
23 by any corporation whose income and apportionment factors are
24 taken into account pursuant to subdivision (a) from either of the
25 following are functionally related dividends and shall be presumed
26 to be business income:

27 (i) A corporation of which more than 50 percent of the voting
28 stock is owned, directly or indirectly, by members of the unitary
29 group and which is engaged in the same general line of business.

30 (ii) Any corporation that is either a significant source of supply
31 for the unitary business or a significant purchaser of the output of
32 the unitary business, or that sells a significant part of its output or
33 obtains a significant part of its raw materials or input from the
34 unitary business. "Significant," as used in this subparagraph,
35 means an amount of 15 percent or more of either input or output.

36 All other dividends shall be classified as business or
37 nonbusiness income without regard to this subparagraph.

38 (3) The definitions and locations of property, payroll, and sales
39 shall be determined under the laws and regulations that set forth
40 the apportionment formulas used by the individual states to assign



net income subject to taxes on or measured by net income in that state. If a state does not impose a tax on or measured by net income or does not have laws or regulations with respect to the assignment of property, payroll, and sales, the laws and regulations provided in Article 2 (commencing with Section 25120) shall apply.

Sales shall be considered to be made to a state only if the corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.

(4) “The United States” means the 50 states of the United States and the District of Columbia.

(c) All references in this part to income determined pursuant to Section 25101 shall also mean income determined pursuant to this section.

SEC. 59. Section 3050.1 of the Vehicle Code is amended to read:

3050.1. (a) In a proceeding, hearing, or in the discharge of duties imposed under this chapter, the board, its executive director, or an administrative law judge designated by the board may administer oaths, take depositions, certify to official acts, and issue subpoenas to compel attendance of witnesses and the production of books, records, papers, and other documents in any part of the state.

(b) For purposes of discovery, the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in the civil action discovery procedures in ~~Article 3 (commencing with Section 2016) of Chapter 3 of Title 3~~ *Title 4 (commencing with Section 2016.010)* of Part 4 of the Code of Civil Procedure, excepting the provisions of ~~Section 2030 of that code~~ *Chapter 13 (commencing with Section 2030.010) of that title*. Discovery shall be completed no later than 15 days prior to the commencement of the proceeding or hearing before the board. This subdivision shall apply only to those proceedings or hearings involving a petition or protest filed pursuant to subdivision (c) or (d) of Section 3050. The board, its executive director, or an administrative law judge designated by

1 the board may issue subpoenas to compel attendance at depositions
2 of persons having knowledge of the acts, omissions, or events that
3 are the basis for the proceedings, as well as the production of
4 books, records, papers, and other documents.

5 SEC. 60. Section 1100 of the Water Code is amended to read:

6 1100. The board or any party to a proceeding before it may,
7 in any investigation or hearing, cause the deposition of witnesses
8 residing within or without the state to be taken in the manner
9 prescribed by law for depositions in civil actions in the superior
10 courts of this state under ~~Article 3 (commencing with Section~~
11 ~~2016) of Chapter 3 of Title 4 (commencing with Section 2016.010)~~
12 of Part 4 of the Code of Civil Procedure.

13 SEC. 61. Nothing in this act is intended to substantively
14 change the law of civil discovery.

15 SEC. 62. This act becomes operative on July 1, 2005.

