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CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 421

Introduced by Assembly Member Wayne

February 20, 2001

An act to amend Section 2025 of the Code of Civil Procedure, relating to discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 421, as amended, Wayne. Depositions: recording.

Under existing law, the operator of recording equipment used to audiotape or videotape a deposition must be competent to set up, operate, and monitor the equipment, as specified, and may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of the deposition testimony is to be used for specified purposes regarding the testimony of an expert witness who is available to testify at trial, the operator of the recording equipment must be a person who is authorized to administer an oath, and may not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

This bill would instead provide that the operator of the recording equipment must be competent to set up, operate, and monitor the equipment, and may be the attorney or an independent contractor or an employee of the attorney taking the deposition, as specified. The bill would also require the attorney who selects the operator of the recording equipment to make available a copy of the audiotape or videotape to any party upon request and payment by that party of the cost of reproduction of that copy.

This bill would incorporate additional changes in Section 2025 of the Code of Civil Procedure, proposed by AB 2842 that are not otherwise in conflict, to be operative only if AB 2842 and this bill are both chaptered and because effective on or before January 1, 2003, and this bill is chaptered last.

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 2025 of the Code of Civil Procedure is
2 amended to read:
3 2025. (a) Any party may obtain discovery within the scope
4 delimited by Section 2017, and subject to the restrictions set forth
5 in Section 2019, by taking in California the oral deposition of any
6 person, including any party to the action. The person deposed may
7 be a natural person, an organization such as a public or private
8 corporation, a partnership, an association, or a governmental
9 agency.
10 (b) Subject to subdivisions (f) and (t), an oral deposition may
11 be taken as follows:
12 (1) The defendant may serve a deposition notice without leave
13 of court at any time after that defendant has been served or has
14 appeared in the action, whichever occurs first.
15 (2) The plaintiff may serve a deposition notice without leave of
16 court on any date that is 20 days after the service of the summons
17 on, or appearance by, any defendant. However, on motion with or
18 without notice, the court, for good cause shown, may grant to a
19 plaintiff leave to serve a deposition notice on an earlier date.
20 (c) A party desiring to take the oral deposition of any person
21 shall give notice in writing in the manner set forth in subdivision
22 (d). However, where under subdivision (d) of Section 2020 only



1 the production by a nonparty of business records for copying is
2 desired, a copy of the deposition subpoena shall serve as the notice
3 of deposition. The notice of deposition shall be given to every
4 other party who has appeared in the action. The deposition notice,
5 or the accompanying proof of service, shall list all the parties or
6 attorneys for parties on whom it is served.

7 Where, as defined in subdivision (a) of Section 1985.3, the party
8 giving notice of the deposition is a subpoenaing party, and the
9 deponent is a witness commanded by a deposition subpoena to
10 produce personal records of a consumer, the subpoenaing party
11 shall serve on that consumer (1) a notice of the deposition, (2) the
12 notice of privacy rights specified in subdivision (e) of Section
13 1985.3 and in Section 1985.6, and (3) a copy of the deposition
14 subpoena.

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

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

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

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

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

26 (5) Any intention to record the testimony by audiotape or
27 videotape, in addition to recording the testimony by the
28 stenographic method as required by paragraph (1) of subdivision
29 (l) and any intention to record the testimony by stenographic
30 method, through the instant visual display of the testimony. In the
31 latter event, a copy of the deposition notice shall also be given to
32 the deposition officer. Any offer to provide the instant visual
33 display of the testimony or to provide rough draft transcripts to any
34 party which is accepted prior to, or offered at, the deposition shall
35 also be made by the deposition officer at the deposition to all
36 parties in attendance.

37 (6) Any intention to reserve the right to use at trial a videotape
38 deposition of a treating or consulting physician or of any expert
39 witness under paragraph (4) of subdivision (u). In this event, the
40 operator of the videotape camera shall be a person who is



1 authorized to administer an oath, and shall not be financially
2 interested in the action or be a relative or employee of any attorney
3 of any of the parties.

4 If the deponent named is not a natural person, the deposition
5 notice shall describe with reasonable particularity the matters on
6 which examination is requested. In that event, the deponent shall
7 designate and produce at the deposition those of its officers,
8 directors, managing agents, employees, or agents who are most
9 qualified to testify on its behalf as to those matters to the extent of
10 any information known or reasonably available to the deponent.
11 A deposition subpoena shall advise a nonparty deponent of its duty
12 to make this designation, and shall describe with reasonable
13 particularity the matters on which examination is requested.

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

17 (e) (1) The deposition of a natural person, whether or not a
18 party to the action, shall be taken at a place that is, at the option of
19 the party giving notice of the deposition, either within 75 miles of
20 the deponent’s residence, or within the county where the action is
21 pending and within 150 miles of the deponent’s residence, unless
22 the court orders otherwise under paragraph (3).

23 (2) The deposition of an organization that is a party to the action
24 shall be taken at a place that is, at the option of the party giving
25 notice of the deposition, either within 75 miles of the
26 organization’s principal executive or business office in California,
27 or within the county where the action is pending and within 150
28 miles of that office. The deposition of any other organization shall
29 be taken within 75 miles of the organization’s principal executive
30 or business office in California, unless the organization consents
31 to a more distant place. If the organization has not designated a
32 principal executive or business office in California, the deposition
33 shall be taken at a place that is, at the option of the party giving
34 notice of the deposition, either within the county where the action
35 is pending, or within 75 miles of any executive or business office
36 in California of the organization.

37 (3) A party desiring to take the deposition of a natural person
38 who is a party to the action or an officer, director, managing agent,
39 or employee of a party may make a motion for an order that the
40 deponent attend for deposition at a place that is more distant than



1 that permitted under paragraph (1). This motion shall be
2 accompanied by a declaration stating facts showing a reasonable
3 and good faith attempt at an informal resolution of any issue
4 presented by the motion.

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

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

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

13 (C) The convenience of the deponent.

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

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

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

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

23 The order may be conditioned on the advancement by the
24 moving party of the reasonable expenses and costs to the deponent
25 for travel to the place of deposition.

26 The court shall impose a monetary sanction under Section 2023
27 against any party, person, or attorney who unsuccessfully makes
28 or opposes a motion to increase travel limits for a party deponent,
29 unless it finds that the one subject to the sanction acted with
30 substantial justification or that other circumstances make the
31 imposition of the sanction unjust.

32 (f) An oral deposition shall be scheduled for a date at least 10
33 days after service of the deposition notice. If, as defined in
34 subdivision (a) of Section 1985.3, the party giving notice of the
35 deposition is a subpoenaing party, and the deponent is a witness
36 commanded by a deposition subpoena to produce personal records
37 of a consumer, the deposition shall be scheduled for a date at least
38 20 days after issuance of that subpoena. However, in unlawful
39 detainer actions, an oral deposition shall be scheduled for a date at



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

3 On motion or ex parte application of any party or deponent, for
4 good cause shown, the court may shorten or extend the time for
5 scheduling a deposition, or may stay its taking until the
6 determination of a motion for a protective order under subdivision
7 (i).

8 (g) Any party served with a deposition notice that does not
9 comply with subdivisions (b) to (f), inclusive, waives any error or
10 irregularity unless that party promptly serves a written objection
11 specifying that error or irregularity at least three calendar days
12 prior to the date for which the deposition is scheduled, on the party
13 seeking to take the deposition and any other attorney or party on
14 whom the deposition notice was served. If an objection is made
15 three calendar days before the deposition date, the objecting party
16 shall make personal service of that objection pursuant to Section
17 1011 on the party who gave notice of the deposition. Any
18 deposition taken after the service of a written objection shall not
19 be used against the objecting party under subdivision (u) if the
20 party did not attend the deposition and if the court determines that
21 the objection was a valid one.

22 In addition to serving this written objection, a party may also
23 move for an order staying the taking of the deposition and
24 quashing the deposition notice. This motion shall be accompanied
25 by a declaration stating facts showing a reasonable and good faith
26 attempt at an informal resolution of any issue presented by the
27 motion. The taking of the deposition is stayed pending the
28 determination of this motion.

29 The court shall impose a monetary sanction under Section 2023
30 against any party, person, or attorney who unsuccessfully makes
31 or opposes a motion to quash a deposition notice, unless it finds
32 that the one subject to the sanction acted with substantial
33 justification or that other circumstances make the imposition of the
34 sanction unjust.

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



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

5 (3) A person may take, and any person other than the deponent
6 may attend, a deposition by telephone or other remote electronic
7 means. The court may expressly provide that a nonparty deponent
8 may appear at his or her deposition by telephone if it finds there
9 is good cause and no prejudice to any party. A party deponent must
10 appear at his or her deposition in person and be in the presence of
11 the deposition officer. The procedures to implement this section
12 shall be established by court order in the specific action proceeding
13 or by the California Rules of Court.

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

20 The court, for good cause shown, may make any order that
21 justice requires to protect any party, deponent, or other natural
22 person or organization from unwarranted annoyance,
23 embarrassment, or oppression, or undue burden and expense. This
24 protective order may include, but is not limited to, one or more of
25 the following directions:

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

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

28 (3) That a videotape deposition of a treating or consulting
29 physician or of any expert witness, intended for possible use at trial
30 under paragraph (4) of subdivision (u), be postponed until the
31 moving party has had an adequate opportunity to prepare, by
32 discovery deposition of the deponent, or other means, for
33 cross-examination.

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

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

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



- 1 (7) That the method of discovery be interrogatories to a party
2 instead of an oral deposition.
- 3 (8) That the testimony be recorded in a manner different from
4 that specified in the deposition notice.
- 5 (9) That certain matters not be inquired into.
- 6 (10) That the scope of the examination be limited to certain
7 matters.
- 8 (11) That all or certain of the writings or tangible things
9 designated in the deposition notice not be produced, inspected, or
10 copied.
- 11 (12) That designated persons, other than the parties to the
12 action and their officers and counsel, be excluded from attending
13 the deposition.
- 14 (13) That a trade secret or other confidential research,
15 development, or commercial information not be disclosed or be
16 disclosed only to specified persons or only in a specified way.
- 17 (14) That the parties simultaneously file specified documents
18 enclosed in sealed envelopes to be opened as directed by the court.
- 19 (15) That the deposition be sealed and thereafter opened only
20 on order of the court.
- 21 If the motion for a protective order is denied in whole or in part,
22 the court may order that the deponent provide or permit the
23 discovery against which protection was sought on those terms and
24 conditions that are just.
- 25 The court shall impose a monetary sanction under Section 2023
26 against any party, person, or attorney who unsuccessfully makes
27 or opposes a motion for a protective order, unless it finds that the
28 one subject to the sanction acted with substantial justification or
29 that other circumstances make the imposition of the sanction
30 unjust.
- 31 (j) (1) If the party giving notice of a deposition fails to attend
32 or proceed with it, the court shall impose a monetary sanction
33 under Section 2023 against that party, or the attorney for that party,
34 or both, and in favor of any party attending in person or by
35 attorney, unless it finds that the one subject to the sanction acted
36 with substantial justification or that other circumstances make the
37 imposition of the sanction unjust.
- 38 (2) If a deponent does not appear for a deposition because the
39 party giving notice of the deposition failed to serve a required
40 deposition subpoena, the court shall impose a monetary sanction



1 under Section 2023 against that party, or the attorney for that party,
2 or both, in favor of any other party who, in person or by attorney,
3 attended at the time and place specified in the deposition notice in
4 the expectation that the deponent's testimony would be taken,
5 unless the court finds that the one subject to the sanction acted with
6 substantial justification or that other circumstances make the
7 imposition of the sanction unjust.

8 If a deponent on whom a deposition subpoena has been served
9 fails to attend a deposition or refuses to be sworn as a witness, the
10 court may impose on the deponent the sanctions described in
11 subdivision (h) of Section 2020.

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



1 subject to the sanction acted with substantial justification or that
2 other circumstances make the imposition of the sanction unjust.

3 If that party or party-affiliated deponent then fails to obey an
4 order compelling attendance, testimony, and production, the court
5 may make those orders that are just, including the imposition of an
6 issue sanction, an evidence sanction, or a terminating sanction
7 under Section 2023 against that party deponent or against the party
8 with whom the deponent is affiliated. In lieu of, or in addition to,
9 this sanction, the court may impose a monetary sanction under
10 Section 2023 against that deponent or against the party with whom
11 that party deponent is affiliated, and in favor of any party who, in
12 person or by attorney, attended in the expectation that the
13 deponent’s testimony would be taken pursuant to that order.

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

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

21 (2) Services and products offered or provided by the deposition
22 officer or the entity providing the services of the deposition officer
23 to any party or to any party’s attorney or third party who is
24 financing all or part of the action shall be offered to all parties or
25 their attorneys attending the deposition. No service or product may
26 be offered or provided by the deposition officer or by the entity
27 providing the services of the deposition officer to any party or any
28 party’s attorney or third party who is financing all or part of the
29 action unless the service or product is offered or provided to all
30 parties or their attorneys attending the deposition. All services and
31 products offered or provided shall be made available at the same
32 time to all parties or their attorneys.

33 (3) The deposition officer or the entity providing the services
34 of the deposition officer shall not provide to any party or any
35 party’s attorney or third party who is financing all or part of the
36 action any service or product consisting of the deposition officer’s
37 notations or comments regarding the demeanor of any witness,
38 attorney, or party present at the deposition. The deposition officer
39 or entity providing the services of the deposition officer shall not
40 collect any personal identifying information about the witness as



1 a service or product to be provided to any party or third party who
2 is financing all or part of the action.

3 (4) Upon the request of any party or any party's attorney
4 attending a deposition, any party or any party's attorney attending
5 the deposition shall enter in the record of the deposition all services
6 and products made available to that party or party's attorney or
7 third party who is financing all or part of the action by the
8 deposition officer or by the entity providing the services of the
9 deposition officer. A party in the action who is not represented by
10 an attorney shall be informed by the noticing party or the party's
11 attorney that the unrepresented party may request this statement.

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

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

37 (2) If the deposition is being recorded by means of audiotape
38 or videotape, the following procedure shall be observed:

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



1 (B) The operator of the recording equipment shall be
2 competent to set up, operate, and monitor the equipment in the
3 manner prescribed in this subdivision. The operator may be the
4 attorney or an independent contractor or an employee of the
5 attorney taking the deposition, but no employee may also be the
6 deposition officer. The attorney who selects the operator of the
7 recording equipment shall make available a copy of the audiotape
8 or videotape to any party upon request and upon payment by that
9 party of the cost of reproduction of that copy. Services and
10 products offered or provided by the deposition officer or the entity
11 providing the services of the deposition officer to any party or to
12 any party's attorney or third party who is financing all or part of
13 the action shall be offered or provided to all parties or their
14 attorneys attending the deposition. No service or product may be
15 offered or provided by the deposition officer or by the entity
16 providing the services of the deposition officer to any party or any
17 party's attorney or third party who is financing all or part of the
18 action unless the service or product is offered or provided to all
19 parties or their attorneys attending the deposition. All services and
20 products offered or provided shall be made available at the same
21 time to all parties or their attorneys. The deposition officer or the
22 entity providing the services of the deposition officer shall not
23 provide to any party or any other person or entity any service or
24 product consisting of the deposition officer's notations or
25 comments regarding the demeanor of any witness, attorney, or
26 party present at the deposition. The deposition officer or the entity
27 providing the services of the deposition officer shall not collect
28 any personal identifying information about the witness as a service
29 or product to be provided to any party or third party who is
30 financing all or part of the action. Upon the request of any party
31 or any party's attorney attending a deposition, any party or any
32 party's attorney attending the deposition shall enter in the record
33 of the deposition all services and products made available to that
34 party or party's attorney or third party who is financing all or part
35 of the action by the deposition officer or by the entity providing the
36 services of the deposition officer. A party in the action who is not
37 represented by an attorney shall be informed by the noticing party
38 that the unrepresented party may request this statement.



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

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

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

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

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

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

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



1 subdivision (u) shall accompany that offer with a stenographic
2 transcript prepared from that recording.

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

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

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

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

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

34 (n) The deposition officer shall not suspend the taking of
35 testimony without stipulation of the party conducting the
36 deposition and the deponent unless any party attending the
37 deposition or the deponent demands the taking of testimony be
38 suspended to enable that party or deponent to move for a protective
39 order on the ground that the examination is being conducted in bad
40 faith or in a manner that unreasonably annoys, embarrasses, or



1 oppresses that deponent or party. This motion shall be
2 accompanied by a declaration stating facts showing a reasonable
3 and good faith attempt at an informal resolution of each issue
4 presented by the motion. The court, for good cause shown, may
5 terminate the examination or may limit the scope and manner of
6 taking the deposition as provided in subdivision (i). If the order
7 terminates the examination, the deposition shall not thereafter be
8 resumed, except on order of the court.

9 The court shall impose a monetary sanction under Section 2023
10 against any party, person, or attorney who unsuccessfully makes
11 or opposes a motion for this protective order, unless it 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 (o) If a deponent fails to answer any question or to produce any
16 document or tangible thing under the deponent's control that is
17 specified in the deposition notice or a deposition subpoena, the
18 party seeking discovery may move the court for an order
19 compelling that answer or production. This motion shall be made
20 no later than 60 days after the completion of the record of the
21 deposition, and shall be accompanied by a declaration stating facts
22 showing a reasonable and good faith attempt at an informal
23 resolution of each issue presented by the motion. Notice of this
24 motion shall be given to all parties, and to the deponent either
25 orally at the examination, or by subsequent service in writing. If
26 the notice of the motion is given orally, the deposition officer shall
27 direct the deponent to attend a session of the court at the time
28 specified in the notice. Not less than five days prior to the hearing
29 on this motion, the moving party shall lodge with the court a
30 certified copy of any parts of the stenographic transcript of the
31 deposition that are relevant to the motion. If a deposition is
32 recorded by audiotape or videotape, the moving party is required
33 to lodge a certified copy of a transcript of any parts of the
34 deposition that are relevant to the motion. If the court determines
35 that the answer or production sought is subject to discovery, it shall
36 order that the answer be given or the production be made on the
37 resumption of the deposition.

38 The court shall impose a monetary sanction under Section 2023
39 against any party, person, or attorney who unsuccessfully makes
40 or opposes a motion to compel answer or production, unless it



1 finds that the one subject to the sanction acted with substantial
2 justification or that other circumstances make the imposition of the
3 sanction unjust.

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

15 (p) Unless the parties agree otherwise, the testimony at any
16 deposition recorded by stenographic means shall be transcribed.
17 The party noticing the deposition shall bear the cost of that
18 transcription, unless the court, on motion and for good cause
19 shown, orders that the cost be borne or shared by another party.
20 Notwithstanding paragraph (2) of subdivision (k), any other party,
21 at that party's expense, may obtain a copy of the transcript. If the
22 deposition officer receives a request from a party for an original
23 or a copy of the deposition transcript, or any portion thereof, and
24 the document will be available to that party prior to the time the
25 original or copy would be available to any other party, the
26 deposition officer shall immediately notify all other parties
27 attending the deposition of the request, and shall, upon request by
28 any party other than the party making the original request, make
29 that copy of the full or partial deposition transcript available to all
30 parties at the same time. Stenographic notes of depositions shall
31 be retained by the reporter for a period of not less than eight years
32 from the date of the deposition, where no transcript is produced,
33 and not less than one year from the date on which the transcript is
34 produced. Those notes may be either on paper or electronic media,
35 as long as it allows for satisfactory production of a transcript at any
36 time during the periods specified. At the request of any other party
37 to the action, including a party who did not attend the taking of the
38 deposition testimony, any party who records or causes the
39 recording of that testimony by means of audiotape or videotape
40 shall promptly (1) permit that other party to hear the audiotape or



1 to view the videotape, and (2) furnish a copy of the audiotape or
2 videotape to that other party on receipt of payment of the
3 reasonable cost of making that copy of the tape.

4 If the testimony at the deposition is recorded both
5 stenographically, and by audiotape or videotape, the stenographic
6 transcript is the official record of that testimony for the purpose of
7 the trial and any subsequent hearing or appeal.

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

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

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



1 within the allotted period, the deposition shall be given the same
2 effect as though it had been approved, subject to any changes
3 timely made by the deponent. However, on a seasonable motion
4 to suppress the deposition, accompanied by a declaration stating
5 facts showing a reasonable and good faith attempt at an informal
6 resolution of each issue presented by the motion, the court may
7 determine that the reasons given for the failure or refusal to
8 approve the transcript require rejection of the deposition in whole
9 or in part.

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

16 (2) If there is no stenographic transcription of the deposition,
17 the deposition officer shall send written notice to the deponent and
18 to all parties attending the deposition that the recording is available
19 for review, unless the deponent and all these parties agree on the
20 record to waive the hearing or viewing of an audiotape or
21 videotape recording of the testimony. For 30 days following this
22 notice the deponent, either in person or by signed letter to the
23 deposition officer, may change the substance of the answer to any
24 question.

25 The deposition officer shall set forth in a writing to accompany
26 the recording any changes made by the deponent, as well as either
27 the deponent's signature identifying the deposition as his or her
28 own, or a statement of the deponent's failure to supply the
29 signature, or to contact the officer within the allotted period. When
30 a deponent fails to contact the officer within the allotted period, or
31 expressly refuses by a signature to identify the deposition as his or
32 her own, the deposition shall be given the same effect as though
33 signed. However, on a reasonable motion to suppress the
34 deposition, accompanied by a declaration stating facts showing a
35 reasonable and good faith attempt at an informal resolution of each
36 issue presented by the motion, the court may determine that the
37 reasons given for the refusal to sign require rejection of the
38 deposition in whole or in part.

39 The court shall impose a monetary sanction under Section 2023
40 against any party, person, or attorney who unsuccessfully makes



1 or opposes a motion to suppress a deposition, unless it finds that
2 the one subject to the sanction acted with substantial justification
3 or that other circumstances make the imposition of the sanction
4 unjust.

5 (r) (1) The deposition officer shall certify on the transcript of
6 the deposition, or in a writing accompanying an audiotaped or
7 videotaped deposition as described in paragraph (2) of subdivision
8 (q), that the deponent was duly sworn and that the transcript or
9 recording is a true record of the testimony given.

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

17 (s) (1) The certified transcript of a deposition shall not be filed
18 with the court. Instead, the deposition officer shall securely seal
19 that transcript in an envelope or package endorsed with the title of
20 the action and marked: “Deposition of (here insert name of
21 deponent),” and shall promptly transmit it to the attorney for the
22 party who noticed the deposition. This attorney shall store it under
23 conditions that will protect it against loss, destruction, or
24 tampering.

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

31 (2) An audiotape or videotape record of deposition testimony,
32 including a certified tape made by an operator qualified under
33 subparagraph (B) of paragraph (2) of subdivision (l), shall not be
34 filed with the court. Instead, the operator shall retain custody of
35 that record and shall store it under conditions that will protect it
36 against loss, destruction, or tampering, and preserve as far as
37 practicable the quality of the tape and the integrity of the testimony
38 and images it contains.

39 At the request of any party to the action, including a party who
40 did not attend the taking of the deposition testimony, or at the



1 request of the deponent, that operator shall promptly (A) permit
2 the one making the request to hear or to view the tape on receipt
3 of payment of a reasonable charge for providing the facilities for
4 hearing or viewing the tape, and (B) furnish a copy of the audiotape
5 or the videotape recording to the one making the request on receipt
6 of payment of the reasonable cost of making that copy of the tape.

7 The attorney or operator who has custody of an audiotape or
8 videotape record of deposition testimony shall retain custody of it
9 until six months after final disposition of the action. At that time,
10 the audiotape or videotape may be destroyed or erased, unless the
11 court, on motion of any party and for good cause shown, orders
12 that the tape be preserved for a longer period.

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

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

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



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

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

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

13 (B) The deponent, without the procurement or wrongdoing of
14 the proponent of the deposition for the purpose of preventing
15 testimony in open court, is (i) exempted or precluded on the
16 ground of privilege from testifying concerning the matter to which
17 the deponent's testimony is relevant, (ii) disqualified from
18 testifying, (iii) dead or unable to attend or testify because of
19 existing physical or mental illness or infirmity, (iv) absent from the
20 trial or other hearing and the court is unable to compel the
21 deponent's attendance by its process, or (v) absent from the trial
22 or other hearing and the proponent of the deposition has exercised
23 reasonable diligence but has been unable to procure the deponent's
24 attendance by the court's process.

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

29 (4) Any party may use a videotape deposition of a treating or
30 consulting physician or of any expert witness even though the
31 deponent is available to testify if the deposition notice under
32 subdivision (d) reserved the right to use the deposition at trial, and
33 if that party has complied with subparagraph (I) of paragraph (2)
34 of subdivision (l).

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

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



1 (7) When an action has been brought in any court of the United
2 States or of any state, and another action involving the same
3 subject matter is subsequently brought between the same parties
4 or their representatives or successors in interest, all depositions
5 lawfully taken and duly filed in the initial action may be used in
6 the subsequent action as if originally taken in that subsequent
7 action. A deposition previously taken may also be used as
8 permitted by the Evidence Code.

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

12 *SEC. 1.5. Section 2025 of the Code of Civil Procedure is*
13 *amended to read:*

14 2025. (a) Any party may obtain discovery within the scope
15 delimited by Section 2017, and subject to the restrictions set forth
16 in Section 2019, by taking in California the oral deposition of any
17 person, including any party to the action. The person deposed may
18 be a natural person, an organization such as a public or private
19 corporation, a partnership, an association, or a governmental
20 agency.

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

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

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

31 (c) A party desiring to take the oral deposition of any person
32 shall give notice in writing in the manner set forth in subdivision
33 (d). However, where under subdivision (d) of Section 2020 only
34 the production by a nonparty of business records for copying is
35 desired, a copy of the deposition subpoena shall serve as the notice
36 of deposition. The notice of deposition shall be given to every
37 other party who has appeared in the action. The deposition notice,
38 or the accompanying proof of service, shall list all the parties or
39 attorneys for parties on whom it is served.



1 Where, as defined in subdivision (a) of Section 1985.3, the party
2 giving notice of the deposition is a subpoenaing party, and the
3 deponent is a witness commanded by a deposition subpoena to
4 produce personal records of a consumer, the subpoenaing party
5 shall serve on that consumer (1) a notice of the deposition, (2) the
6 notice of privacy rights specified in subdivision (e) of Section
7 1985.3 and in Section 1985.6, and (3) a copy of the deposition
8 subpoena.

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

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

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

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

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

20 (5) Any intention *by the party noticing the deposition* to record
21 the testimony by ~~audiotape or videotape~~ *audio or video*
22 *technology*, in addition to recording the testimony by the
23 stenographic method as required by paragraph (1) of subdivision
24 (l) and any intention to record the testimony by stenographic
25 method, through the instant visual display of the testimony. ~~In the~~
26 ~~latter event~~ *If the deposition will be conducted using instant visual*
27 *display*, a copy of the deposition notice shall also be given to the
28 deposition officer. Any offer to provide the instant visual display
29 of the testimony or to provide rough draft transcripts to any party
30 which is accepted prior to, or offered at, the deposition shall also
31 be made by the deposition officer at the deposition to all parties in
32 attendance. *Any party or attorney requesting the provision of the*
33 *instant video display of the testimony, or rough draft transcripts,*
34 *shall pay the reasonable costs of those services, which may be no*
35 *greater than the costs charged to any other party or attorney.*

36 (6) Any intention to reserve the right to use at trial a ~~videotape~~
37 *video recording of the deposition testimony* of a treating or
38 consulting physician or of any expert witness under paragraph (4)
39 of subdivision (u). In this event, the operator of the ~~videotape~~ *video*
40 camera shall be a person who is authorized to administer an oath,



1 and shall not be financially interested in the action or be a relative
2 or employee of any attorney of any of the parties.

3 If the deponent named is not a natural person, the deposition
4 notice shall describe with reasonable particularity the matters on
5 which examination is requested. In that event, the deponent shall
6 designate and produce at the deposition those of its officers,
7 directors, managing agents, employees, or agents who are most
8 qualified to testify on its behalf as to those matters to the extent of
9 any information known or reasonably available to the deponent.
10 A deposition subpoena shall advise a nonparty deponent of its duty
11 to make this designation, and shall describe with reasonable
12 particularity the matters on which examination is requested.

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

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

22 (2) The deposition of an organization that is a party to the action
23 shall be taken at a place that is, at the option of the party giving
24 notice of the deposition, either within 75 miles of the
25 organization's principal executive or business office in California,
26 or within the county where the action is pending and within 150
27 miles of that office. The deposition of any other organization shall
28 be taken within 75 miles of the organization's principal executive
29 or business office in California, unless the organization consents
30 to a more distant place. If the organization has not designated a
31 principal executive or business office in California, the deposition
32 shall be taken at a place that is, at the option of the party giving
33 notice of the deposition, either within the county where the action
34 is pending, or within 75 miles of any executive or business office
35 in California of the organization.

36 (3) A party desiring to take the deposition of a natural person
37 who is a party to the action or an officer, director, managing agent,
38 or employee of a party may make a motion for an order that the
39 deponent attend for deposition at a place that is more distant than
40 that permitted under paragraph (1). This motion shall be



1 accompanied by a declaration stating facts showing a reasonable
2 and good faith attempt at an informal resolution of any issue
3 presented by the motion.

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

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

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

12 (C) The convenience of the deponent.

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

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

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

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

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

25 The court shall impose a monetary sanction under Section 2023
26 against any party, person, or attorney who unsuccessfully makes
27 or opposes a motion to increase travel limits for a party deponent,
28 unless it finds that the one subject to the sanction acted with
29 substantial justification or that other circumstances make the
30 imposition of the sanction unjust.

31 (f) An oral deposition shall be scheduled for a date at least 10
32 days after service of the deposition notice. If, as defined in
33 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. However, in unlawful
38 detainer actions, an oral deposition shall be scheduled for a date at
39 least five days after service of the deposition notice, but not later
40 than five days before trial.



1 On motion or ex parte application of any party or deponent, for
2 good cause shown, the court may shorten or extend the time for
3 scheduling a deposition, or may stay its taking until the
4 determination of a motion for a protective order under subdivision
5 (i).

6 (g) Any party served with a deposition notice that does not
7 comply with subdivisions (b) to (f), inclusive, waives any error or
8 irregularity unless that party promptly serves a written objection
9 specifying that error or irregularity at least three calendar days
10 prior to the date for which the deposition is scheduled, on the party
11 seeking to take the deposition and any other attorney or party on
12 whom the deposition notice was served. If an objection is made
13 three calendar days before the deposition date, the objecting party
14 shall make personal service of that objection pursuant to Section
15 1011 on the party who gave notice of the deposition. Any
16 deposition taken after the service of a written objection shall not
17 be used against the objecting party under subdivision (u) if the
18 party did not attend the deposition and if the court determines that
19 the objection was a valid one.

20 In addition to serving this written objection, a party may also
21 move for an order staying the taking of the deposition and
22 quashing the deposition notice. This motion shall be accompanied
23 by a declaration stating facts showing a reasonable and good faith
24 attempt at an informal resolution of any issue presented by the
25 motion. The taking of the deposition is stayed pending the
26 determination of this motion.

27 The court shall impose a monetary sanction under Section 2023
28 against any party, person, or attorney who unsuccessfully makes
29 or opposes a motion to quash a deposition notice, unless it finds
30 that the one subject to the sanction acted with substantial
31 justification or that other circumstances make the imposition of the
32 sanction unjust.

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

38 (2) The attendance and testimony of any other deponent, as
39 well as the production by the deponent of any document or tangible



1 thing for inspection and copying, requires the service on the
2 deponent of a deposition subpoena under Section 2020.

3 (3) A person may take, and any person other than the deponent
4 may attend, a deposition by telephone or other remote electronic
5 means. The court may expressly provide that a nonparty deponent
6 may appear at his or her deposition by telephone if it finds there
7 is good cause and no prejudice to any party. A party deponent ~~must~~
8 *shall* appear at his or her deposition in person and be in the
9 presence of the deposition officer. The procedures to implement
10 this section shall be established by court order in the specific action
11 proceeding or by the California Rules of Court.

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

18 The court, for good cause shown, may make any order that
19 justice requires to protect any party, deponent, or other natural
20 person or organization from unwarranted annoyance,
21 embarrassment, or oppression, or undue burden and expense. This
22 protective order may include, but is not limited to, one or more of
23 the following directions:

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

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

26 (3) That a ~~videotape~~ *video recording of the* deposition
27 *testimony* of a treating or consulting physician or of any expert
28 witness, intended for possible use at trial under paragraph (4) of
29 subdivision (u), be postponed until the moving party has had an
30 adequate opportunity to prepare, by discovery deposition of the
31 deponent, or other means, for cross-examination.

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

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

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

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



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

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

4 (10) That the scope of the examination be limited to certain
5 matters.

6 (11) That all or certain of the writings or tangible things
7 designated in the deposition notice not be produced, inspected, or
8 copied.

9 (12) That designated persons, other than the parties to the
10 action and their officers and counsel, be excluded from attending
11 the deposition.

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

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

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

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

23 The court shall impose a monetary sanction under Section 2023
24 against any party, person, or attorney who unsuccessfully makes
25 or opposes a motion for a protective order, 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 (j) (1) If the party giving notice of a deposition fails to attend
30 or proceed with it, the court shall impose a monetary sanction
31 under Section 2023 against that party, or the attorney for that party,
32 or both, and in favor of any party attending in person or by
33 attorney, unless it finds that the one subject to the sanction acted
34 with substantial justification or that other circumstances make the
35 imposition of the sanction unjust.

36 (2) If a deponent does not appear for a deposition because the
37 party giving notice of the deposition failed to serve a required
38 deposition subpoena, the court shall impose a monetary sanction
39 under Section 2023 against that party, or the attorney for that party,
40 or both, in favor of any other party who, in person or by attorney,



1 attended at the time and place specified in the deposition notice in
2 the expectation that the deponent's testimony would be taken,
3 unless the court finds that the one subject to the sanction acted with
4 substantial justification or that other circumstances make the
5 imposition of the sanction unjust.

6 If a deponent on whom a deposition subpoena has been served
7 fails to attend a deposition or refuses to be sworn as a witness, the
8 court may impose on the deponent the sanctions described in
9 subdivision (h) of Section 2020.

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

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

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

19 (2) Services and products offered or provided by the deposition
20 officer or the entity providing the services of the deposition officer
21 to any party or to any party’s attorney or third party who is
22 financing all or part of the action shall be offered to all parties or
23 their attorneys attending the deposition. No service or product may
24 be offered or provided by the deposition officer or by the entity
25 providing the services of the deposition officer to any party or any
26 party’s attorney or third party who is financing all or part of the
27 action unless the service or product is offered or provided to all
28 parties or their attorneys attending the deposition. All services and
29 products offered or provided shall be made available at the same
30 time to all parties or their attorneys.

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



1 (4) Upon the request of any party or any party's attorney
2 attending a deposition, any party or any party's attorney attending
3 the deposition shall enter in the record of the deposition all services
4 and products made available to that party or party's attorney or
5 third party who is financing all or part of the action by the
6 deposition officer or by the entity providing the services of the
7 deposition officer. A party in the action who is not represented by
8 an attorney shall be informed by the noticing party or the party's
9 attorney that the unrepresented party may request this statement.

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

14 (l) (1) The deposition officer shall put the deponent under
15 oath. Unless the parties agree or the court orders otherwise, the
16 testimony, as well as any stated objections, shall be taken
17 stenographically. The party noticing the deposition may also
18 record the testimony by ~~audiotape or videotape~~ *audio or video*
19 *technology* if the notice of deposition stated an intention also to
20 record the testimony by either of those methods, or if all the parties
21 agree that the testimony may also be recorded by either of those
22 methods. Any other party, at that party's expense, may make a
23 simultaneous ~~audiotape or videotape~~ *audio or video* record of the
24 deposition, provided that other party promptly, and in no event less
25 than three calendar days before the date for which the deposition
26 is scheduled, serves a written notice of this intention to ~~audiotape~~
27 ~~or videotape~~ *make an audio or video record of* the deposition
28 testimony on the party or attorney who noticed the deposition, on
29 all other parties or attorneys on whom the deposition notice was
30 served under subdivision (c), and on any deponent whose
31 attendance is being compelled by a deposition subpoena under
32 Section 2020. If this notice is given three calendar days before the
33 deposition date, it shall be made by personal service under Section
34 1011. Examination and cross-examination of the deponent shall
35 proceed as permitted at trial under the provisions of the Evidence
36 Code.

37 (2) If the deposition is being recorded by means of ~~audiotape~~
38 ~~or videotape~~ *audio or video technology by, or at the direction of,*
39 *any party,* the following procedure shall be observed:



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

3 (B) The operator of the recording equipment shall be
4 competent to set up, operate, and monitor the equipment in the
5 manner prescribed in this subdivision. The operator may be *the*
6 *attorney or an independent contractor or* an employee of the
7 attorney taking the deposition ~~unless the operator is, but no~~
8 ~~employee may also be~~ the deposition officer. ~~However, if a~~
9 ~~videotape of deposition testimony is to be used under paragraph~~
10 ~~(4) of subdivision (u), The attorney who selects~~ the operator of the
11 recording equipment shall ~~be a person who is authorized to~~
12 ~~administer an oath, and shall not be financially interested in the~~
13 ~~action or be a relative or employee of any attorney of any of the~~
14 ~~parties, unless all parties attending the deposition agree on the~~
15 ~~record to waive these qualifications and restrictions~~ *make*
16 *available a copy of the audio or video record to any party upon*
17 *request and upon payment by that party of the cost of reproduction*
18 *of that copy.* Services and products offered or provided by the
19 deposition officer or the entity providing the services of the
20 deposition officer to any party or to any party's attorney or third
21 party who is financing all or part of the action shall be offered or
22 provided to all parties or their attorneys attending the deposition.
23 No service or product may be offered or provided by the deposition
24 officer or by the entity providing the services of the deposition
25 officer to any party or any party's attorney or third party who is
26 financing all or part of the action unless the service or product is
27 offered or provided to all parties or their attorneys attending the
28 deposition. All services and products offered or provided shall be
29 made available at the same time to all parties or their attorneys. The
30 deposition officer or the entity providing the services of the
31 deposition officer shall not provide to any party or any other
32 person or entity any service or product consisting of the deposition
33 officer's notations or comments regarding the demeanor of any
34 witness, attorney, or party present at the deposition. The deposition
35 officer or the entity providing the services of the deposition officer
36 shall not collect any personal identifying information about the
37 witness as a service or product to be provided to any party or third
38 party who is financing all or part of the action. Upon the request
39 of any party or any party's attorney attending a deposition, any
40 party or any party's attorney attending the deposition shall enter



1 in the record of the deposition all services and products made
2 available to that party or party's attorney or third party who is
3 financing all or part of the action by the deposition officer or by
4 the entity providing the services of the deposition officer. A party
5 in the action who is not represented by an attorney shall be
6 informed by the noticing party that the unrepresented party may
7 request this statement.

8 (C) The operator shall not distort the appearance or the
9 demeanor of participants in the deposition by the use of camera or
10 sound recording techniques.

11 (D) The deposition shall begin with an oral or written statement
12 on camera or on the ~~audiotape~~ *audio recording* that includes the
13 operator's name and business address, the name and business
14 address of the operator's employer, the date, time, and place of the
15 deposition, the caption of the case, the name of the deponent, a
16 specification of the party on whose behalf the deposition is being
17 taken, and any stipulations by the parties.

18 (E) Counsel for the parties shall identify themselves on camera
19 or on the ~~audiotape~~ *audio recording*.

20 (F) The oath shall be administered to the deponent on camera
21 or on the ~~audiotape~~ *audio recording*.

22 (G) If the length of a deposition requires the use of more than
23 one unit of tape *or electronic storage*, the end of each unit and the
24 beginning of each succeeding unit shall be announced on camera
25 or on the ~~audiotape~~ *audio recording*.

26 (H) At the conclusion of a deposition, a statement shall be made
27 on camera or on the ~~audiotape~~ *audio recording* that the deposition
28 is ended and shall set forth any stipulations made by counsel
29 concerning the custody of the audiotape or videotape recording
30 and the exhibits, or concerning other pertinent matters.

31 (I) A party intending to offer an ~~audiotaped or videotaped~~
32 *audio or video* recording of a deposition in evidence under
33 subdivision (u) shall notify the court and all parties in writing of
34 that intent and of the parts of the deposition to be offered within
35 sufficient time for objections to be made and ruled on by the judge
36 to whom the case is assigned for trial or hearing, and for any
37 editing of the ~~tape~~ *recording*. Objections to all or part of the
38 deposition shall be made in writing. The court may permit further
39 designations of testimony and objections as justice may require.
40 With respect to those portions of an ~~audiotaped or videotaped~~



1 *audio or video record of deposition testimony* that are not
2 designated by any party or that are ruled to be objectionable, the
3 court may order that the party offering the recording of the
4 deposition at the trial or hearing suppress those portions, or that an
5 edited version of the deposition ~~tape recording~~ be prepared for use
6 at the trial or hearing. The original ~~audiotape or videotape~~ *audio*
7 *or video record* of the deposition shall be preserved unaltered. If
8 no stenographic record of the deposition testimony has previously
9 been made, the party offering a videotape or an audiotape
10 recording of that testimony under subdivision (u) shall accompany
11 that offer with a stenographic transcript prepared from that
12 recording.

13 (3) In lieu of participating in the oral examination, parties may
14 transmit written questions in a sealed envelope to the party taking
15 the deposition for delivery to the deposition officer, who shall
16 unseal the envelope and propound them to the deponent after the
17 oral examination has been completed.

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

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

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

37 (4) If a deponent fails to answer any question or to produce any
38 document or tangible thing under the deponent's control that is
39 specified in the deposition notice or a deposition subpoena, the
40 party seeking that answer or production may adjourn the



1 deposition or complete the examination on other matters without
2 waiving the right at a later time to move for an order compelling
3 that answer or production under subdivision (o).

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

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

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



1 on this motion, the moving party shall lodge with the court a
2 certified copy of any parts of the stenographic transcript of the
3 deposition that are relevant to the motion. If a deposition is
4 recorded by ~~audiotape or videotape~~ *audio or video technology*, the
5 moving party is required to lodge a certified copy of a transcript
6 of any parts of the deposition that are relevant to the motion. If the
7 court determines that the answer or production sought is subject to
8 discovery, it shall order that the answer be given or the production
9 be made on the resumption of the deposition.

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

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

27 (p) Unless the parties agree otherwise, the testimony at any
28 deposition recorded by stenographic means shall be transcribed.
29 The party noticing the deposition shall bear the cost of that
30 transcription, unless the court, on motion and for good cause
31 shown, orders that the cost be borne or shared by another party.
32 Notwithstanding paragraph (2) of subdivision (k), any other party;
33 ~~at that party's expense~~ *or the deponent, at the expense of the party*
34 *or deponent*, may obtain a copy of the transcript. If the deposition
35 officer receives a request from a party for an original or a copy of
36 the deposition transcript, or any portion thereof, and the ~~document~~
37 *full or partial transcript* will be available to that party prior to the
38 time the original or copy would be available to any other party, the
39 deposition officer shall immediately notify all other parties
40 attending the deposition of the request, and shall, upon request by



1 any party other than the party making the original request, make
2 that copy of the full or partial deposition transcript available to all
3 parties at the same time. Stenographic notes of depositions shall
4 be retained by the reporter for a period of not less than eight years
5 from the date of the deposition, where no transcript is produced,
6 and not less than one year from the date on which the transcript is
7 produced. Those notes may be either on paper or electronic media,
8 as long as it allows for satisfactory production of a transcript at any
9 time during the periods specified. At the request of any other party
10 to the action, including a party who did not attend the taking of the
11 deposition testimony, any party who records or causes the
12 recording of that testimony by means of ~~audiotape or videotape~~
13 *audio or video technology* shall promptly (1) permit that other
14 party to hear the ~~audiotape~~ *audio recording* or to view the
15 ~~videotape~~ *video recording*, and (2) furnish a copy of the ~~audiotape~~
16 ~~or videotape~~ *audio or video recording* to that other party on receipt
17 of payment of the reasonable cost of making that copy of the ~~tape~~
18 *recording*.

19 If the testimony at the deposition is recorded both
20 stenographically, and by ~~audiotape or videotape~~ *audio or video*
21 *technology*, the stenographic transcript is the official record of that
22 testimony for the purpose of the trial and any subsequent hearing
23 or appeal.

24 (q) (1) If the deposition testimony is stenographically
25 recorded, the deposition officer shall send written notice to the
26 deponent and to all parties attending the deposition when the
27 original transcript of the testimony for each session of the
28 deposition is available for reading, correcting, and signing, unless
29 the deponent and the attending parties agree on the record that the
30 reading, correcting, and signing of the transcript of the testimony
31 will be waived or that the reading, correcting, and signing of a
32 transcript of the testimony will take place after the entire
33 deposition has been concluded or at some other specific time. For
34 30 days following each notice, unless the attending parties and the
35 deponent agree on the record or otherwise in writing to a longer or
36 shorter time period, the deponent may change the form or the
37 substance of the answer to a question, and may either approve the
38 transcript of the deposition by signing it, or refuse to approve the
39 transcript by not signing it.



1 Alternatively, within this same period, the deponent may
2 change the form or the substance of the answer to any question and
3 may approve or refuse to approve the transcript by means of a letter
4 to the deposition officer signed by the deponent which is mailed
5 by certified or registered mail with return receipt requested. A
6 copy of that letter shall be sent by first-class mail to all parties
7 attending the deposition. For good cause shown, the court may
8 shorten the 30-day period for making changes, approving, or
9 refusing to approve the transcript.

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

27 The court shall impose a monetary sanction under Section 2023
28 against any party, person, or attorney who unsuccessfully makes
29 or opposes a motion to suppress a deposition, unless it finds that
30 the one subject to the sanction acted with substantial justification
31 or that other circumstances make the imposition of the sanction
32 unjust.

33 (2) If there is no stenographic transcription of the deposition,
34 the deposition officer shall send written notice to the deponent and
35 to all parties attending the deposition that the *audio or video*
36 recording *made by, or at the direction of, any party*, is available for
37 review, unless the deponent and all these parties agree on the
38 record to waive the hearing or viewing of ~~an audiotape or~~
39 ~~videotape~~ the *audio or video* recording of the testimony. For 30
40 days following this notice the deponent, either in person or by



1 signed letter to the deposition officer, may change the substance
2 of the answer to any question.

3 The deposition officer shall set forth in a writing to accompany
4 the recording any changes made by the deponent, as well as either
5 the deponent's signature identifying the deposition as his or her
6 own, or a statement of the deponent's failure to supply the
7 signature, or to contact the officer within the allotted period. When
8 a deponent fails to contact the officer within the allotted period, or
9 expressly refuses by a signature to identify the deposition as his or
10 her own, the deposition shall be given the same effect as though
11 signed. However, on a reasonable motion to suppress the
12 deposition, accompanied by a declaration stating facts showing a
13 reasonable and good faith attempt at an informal resolution of each
14 issue presented by the motion, the court may determine that the
15 reasons given for the refusal to sign require rejection of the
16 deposition in whole or in part.

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

23 (r) (1) The deposition officer shall certify on the transcript of
24 the deposition, or in a writing accompanying an ~~audiotaped or~~
25 ~~videotaped~~ *audio or video record of deposition testimony* as
26 described in paragraph (2) of subdivision (q), that the deponent
27 was duly sworn and that the transcript or recording is a true record
28 of the testimony given.

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

36 (s) (1) The certified transcript of a deposition shall not be filed
37 with the court. Instead, the deposition officer shall securely seal
38 that transcript in an envelope or package endorsed with the title of
39 the action and marked: "Deposition of (here insert name of
40 deponent)," and shall promptly transmit it to the attorney for the



1 party who noticed the deposition. This attorney shall store it under
2 conditions that will protect it against loss, destruction, or
3 tampering.

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

10 (2) An ~~audiotape or videotape~~ *audio or video* record of a
11 deposition testimony *made by, or at the direction of, any party,*
12 including a certified tape made by an operator qualified under
13 subparagraph (B) of paragraph (2) of subdivision (l), shall not be
14 filed with the court. Instead, the operator shall retain custody of
15 that record and shall store it under conditions that will protect it
16 against loss, destruction, or tampering, and preserve as far as
17 practicable the quality of the ~~tape recording~~ and the integrity of the
18 testimony and images it contains.

19 At the request of any party to the action, including a party who
20 did not attend the taking of the deposition testimony, or at the
21 request of the deponent, that operator shall promptly (A) permit
22 the one making the request to hear or to view the ~~tape recording~~
23 on receipt of payment of a reasonable charge for providing the
24 facilities for hearing or viewing the ~~tape recording~~, and (B) furnish
25 a copy of the ~~audiotape or the videotape~~ *audio or video* recording
26 to the one making the request on receipt of payment of the
27 reasonable cost of making that copy of the ~~tape recording~~.

28 The attorney or operator who has custody of an ~~audiotape or~~
29 ~~videotape~~ *audio or video* record of deposition testimony *made by,*
30 *or at the direction, any party,* shall retain custody of it until six
31 months after final disposition of the action. At that time, the
32 ~~audiotape or videotape~~ *audio or video recording* may be destroyed
33 or erased, unless the court, on motion of any party and for good
34 cause shown, orders that the ~~tape recording~~ be preserved for a
35 longer period.

36 (t) Once any party has taken the deposition of any natural
37 person, including that of a party to the action, neither the party who
38 gave, nor any other party who has been served with a deposition
39 notice pursuant to subdivision (c) may take a subsequent
40 deposition of that deponent. However, for good cause shown, the



1 court may grant leave to take a subsequent deposition, and the
2 parties, with the consent of any deponent who is not a party, may
3 stipulate that a subsequent deposition be taken. This subdivision
4 does not preclude taking one subsequent deposition of a natural
5 person who has previously been examined (1) as a result of that
6 person's designation to testify on behalf of an organization under
7 subdivision (d), or (2), pursuant to a court order under Section
8 485.230, for the limited purpose of discovering pursuant to
9 Section 485.230 the identity, location, and value of property in
10 which the deponent has an interest. This subdivision does not
11 authorize the taking of more than one subsequent deposition for
12 the limited purpose of Section 485.230.

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

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

23 (2) An adverse party may use for any purpose, a deposition of
24 a party to the action, or of anyone who at the time of taking the
25 deposition was an officer, director, managing agent, employee,
26 agent, or designee under subdivision (d) of a party. It is not ground
27 for objection to the use of a deposition of a party under this
28 paragraph by an adverse party that the deponent is available to
29 testify, has testified, or will testify at the trial or other hearing.

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

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

35 (B) The deponent, without the procurement or wrongdoing of
36 the proponent of the deposition for the purpose of preventing
37 testimony in open court, is (i) exempted or precluded on the
38 ground of privilege from testifying concerning the matter to which
39 the deponent's testimony is relevant, (ii) disqualified from
40 testifying, (iii) dead or unable to attend or testify because of



1 existing physical or mental illness or infirmity, (iv) absent from the
2 trial or other hearing and the court is unable to compel the
3 deponent's attendance by its process, or (v) absent from the trial
4 or other hearing and the proponent of the deposition has exercised
5 reasonable diligence but has been unable to procure the deponent's
6 attendance by the court's process.

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

11 (4) Any party may use a ~~videotape~~ *video recording of the*
12 deposition *testimony* of a treating or consulting physician or of any
13 expert witness even though the deponent is available to testify if
14 the deposition notice under subdivision (d) reserved the right to
15 use the deposition at trial, and if that party has complied with
16 subparagraph (I) of paragraph (2) of subdivision (I).

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

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

23 (7) When an action has been brought in any court of the United
24 States or of any state, and another action involving the same
25 subject matter is subsequently brought between the same parties
26 or their representatives or successors in interest, all depositions
27 lawfully taken and duly filed in the initial action may be used in
28 the subsequent action as if originally taken in that subsequent
29 action. A deposition previously taken may also be used as
30 permitted by the Evidence Code.

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

34 *SEC. 2. Section 1.5 of this bill incorporates amendments to*
35 *Section 2025 of the Code of Civil Procedure proposed by both this*
36 *bill and AB 2842 that are not otherwise in conflict. It shall only*
37 *become operative if (1) both bills are enacted and become effective*
38 *on or before January 1, 2003, (2) each bill amends Section 2025*
39 *of the Code of Civil Procedure, and (3) this bill is enacted after AB*



1 2842, in which case Section 1 of this bill shall not become
2 operative.

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