



# Fundamentals of Discovery

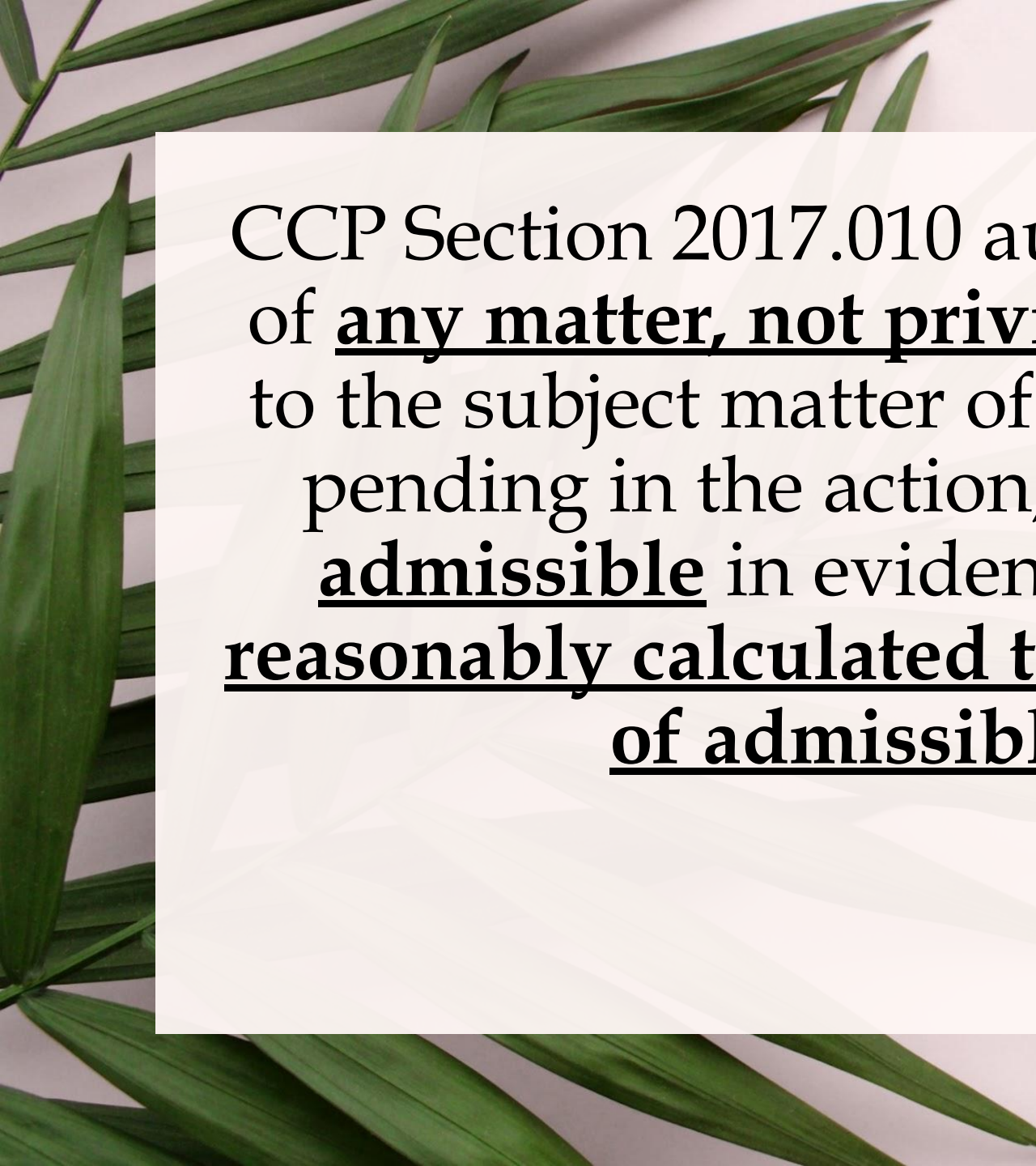
*Presented by the Barristers Section*

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CCP Section 2017.010 authorizes the discovery of any matter, not privileged, that is relevant to the subject matter of the action or a motion pending in the action, if the matter is itself admissible in evidence OR appears to be reasonably calculated to lead to the discovery of admissible evidence.

# WRITTEN DISCOVERY







# Discovery Tools

In looking to the tools of discovery, there are three written discovery tools which are most commonly used.

1. Request for Production of Documents
2. Interrogatories (Special and Form)
3. Request for Admissions/Request for Genuineness

# Request for Production of Documents

- Governed by Code of Civil Procedure 2031.020 et. seq.
- Useful when seeking documents to be produced by the opposing party (but cannot be used on a third party)
- Must be relevant to the matter (ex: cannot seek criminal history in a pure financial dispute)
- Must be tailored to the relevant timeframe (ex: if you only need financial information for 2 years, 10 would be excessive)
- No limit!

# Sample Request

- 3. Any and all checking account records including but not limited to registers, check stubs, canceled checks, bank statements and reconciliation statements covering transactions from January 1, 2021 up to the date of production with respect to any checking account which stands in or stood in the name of Respondent alone, Respondent with another person or persons, in the name of some other person or persons but held for the benefit of Respondent or on which Respondent have the right to make withdrawals or write checks, and all transactions in any such account or accounts.

# Interrogatories

## Special

- Specifically tailored to seek details as to relevant information
- Can ask that someone identify specific items:
  - Accounts
  - Dates and times
  - Events
- Limited to 35 interrogatories, without declaration

## Form

- Quick and easy way to start gathering specific details as to a matter
- Pick your specific topic!
  - General (DISC-001)
  - Employment Law (DISC-002)
  - Unlawful Detainer (DISC-003)
  - Limited Civil (DISC-004)
  - Construction (DISC-005)
  - Family (FL-145)
  - Unlawful Detainer (UD-106)
- Form Interrogatories don't count towards your limit!



# Sample Interrogatory

## Special

- INTERROGATORY NO. 1:  
Identify each and every monthly expense which you are personally responsible for paying, from January 1, 2022 to present.

## Form

- On Judicial Council form FL-145 for Family Law
- On Judicial Council form DISC-001
- Will ask for specifics regarding incidents - DISC-001 is 8 pages
  - Will ask for witnesses, damages, medical history, etc.



# Request for...

## Admissions

- Governed by CCP 2033.01 et seq.
- Pins opposing party into “admit” or “deny”
- Useful if you are aware of specific items that you need the opposing party to specifically state are true or untrue
- Limited to 35 requests for admissions without attorney declaration

## Genuineness

- Governed by CCP 2033.01 et seq.
- Used to authenticate documents
- Useful pretrial to save time with authentication
- Unlimited!

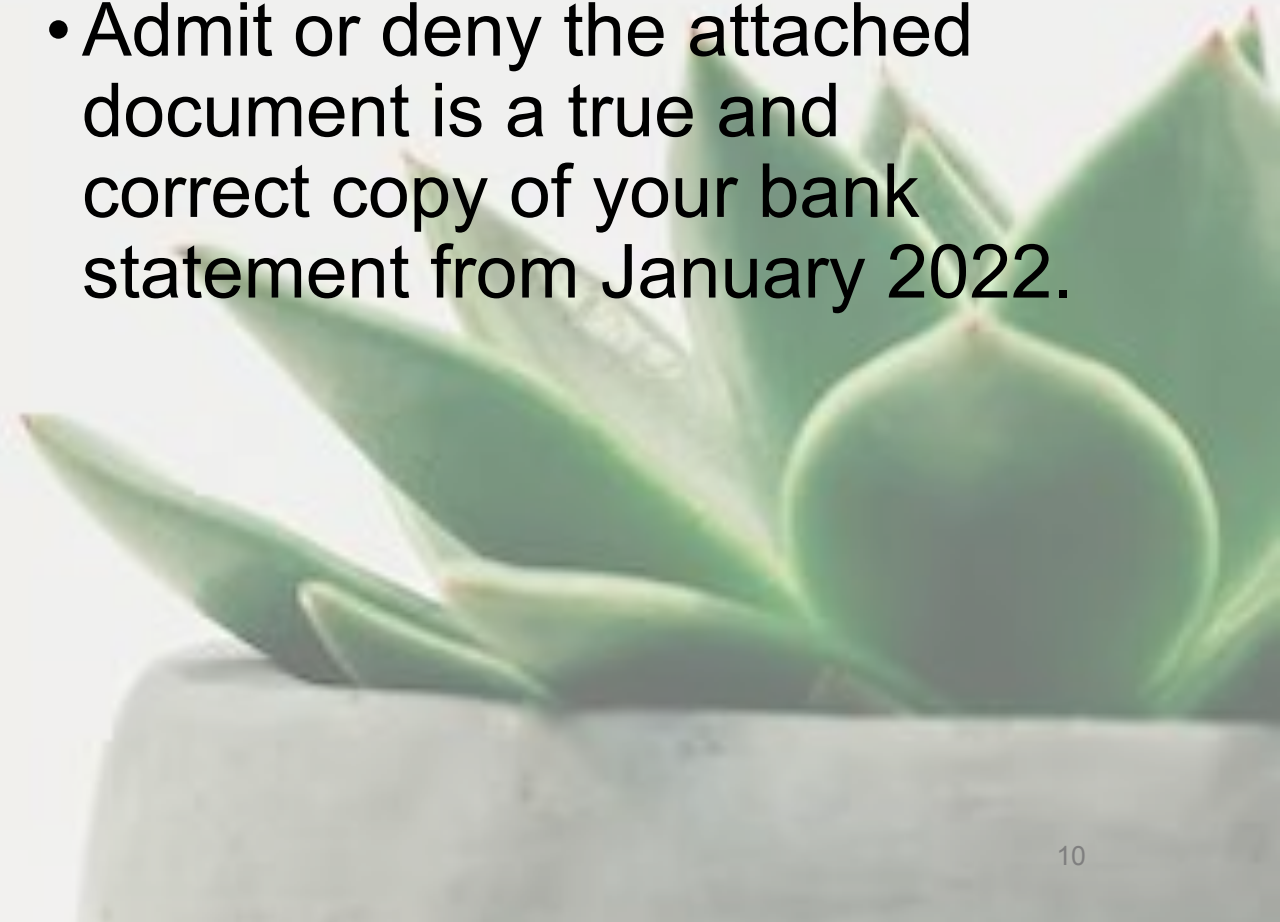
# Sample Request for...

## Admissions

- Admit or deny you were present at 123 Main Street on 01/01/2022.

## Genuineness

- Admit or deny the attached document is a true and correct copy of your bank statement from January 2022.



# Answering Discovery



# What is discoverable, generally?

What you must provide: Information or documents “in your possession, custody, or control”

- Documents or items need not be in the actual possession of a party
- What is in the parties custody or control is a **factual** question
  - See: *Unger v. Los Angeles Transit Lines* (1960) 180 Cal.App.2d 172
  - Documents held by your attorney are in your control
    - *Padron v. Watchtower Bible & Tract Soc’y of New York, Inc.* (2017) 16 Cal.App.5<sup>th</sup> 1246
  - Documents held by an insurance company on your behalf are in your custody or control
    - See: *Clark v. Superior Court* (1960) 177 Cal.App.2d 577





# GENERAL REQUIREMENTS

You must serve a written response within 30 days of the request. The first paragraph of the response, immediately below the title of the case, must identify:

1. The demanding party
2. The requesting party
3. The Set Number

In the body of the response, you must identify each request separately.

# VERIFICATION

A party must sign the response under oath, unless the response only contains objections.

Counsel must also sign any response that contains an objection.  
Counsel may sign individual requests.

# Answers: Request to Production

## **A statement that the party will comply with the demand (in whole or in part)**

Must include a statement that all documents in the demanded category that are in the possession, custody, or control of the party and to which no objection is being made will be included in the production

## **A representation that the party lacks the ability to comply**

Must confirm that a reasonable search and inquiry has been made in an effort to comply with a demand, and shall specify whether the inability to comply is because the item has never existed, has been destroyed, has been lost, misplaced or stolen, or has never been, or is no longer in the possession, custody or control of the responding party.

Identify the person/company, with address, if you believe another has possession custody or control

## **An objection to the demand**

Identify grounds for your objection (including privilege as a grounds)

Can also object that the request is outside of the scope of discovery or the request does not comply with statutory requirements

If you plan to respond but cannot do so by the date sent it the demand, you should object to the date set!



# Answers: Requests for Admission

## **Admit**

Answers must be simple and straightforward.  
Example: "Admit."

Can specify part of the request as true, but can then deny the rest. Example: "Petitioner admits that X, but denies that Y."

## **Lack of Knowledge**

Party may answer that they lack specific knowledge or information to admit. To avoid a motion to compel, list what steps have been taken to ascertain the information.

## **Deny**

Answers must be simple and straightforward.  
Example: "Admit."  
\*be aware that if you deny something that is later found to be true, you may be liable for fees and costs!

## **An objection to the demand**

Identify grounds for your objection (including privilege as a grounds)  
Can also object that the request is outside of the scope of discovery or the request does not comply with statutory requirements



# Answers: Interrogatories

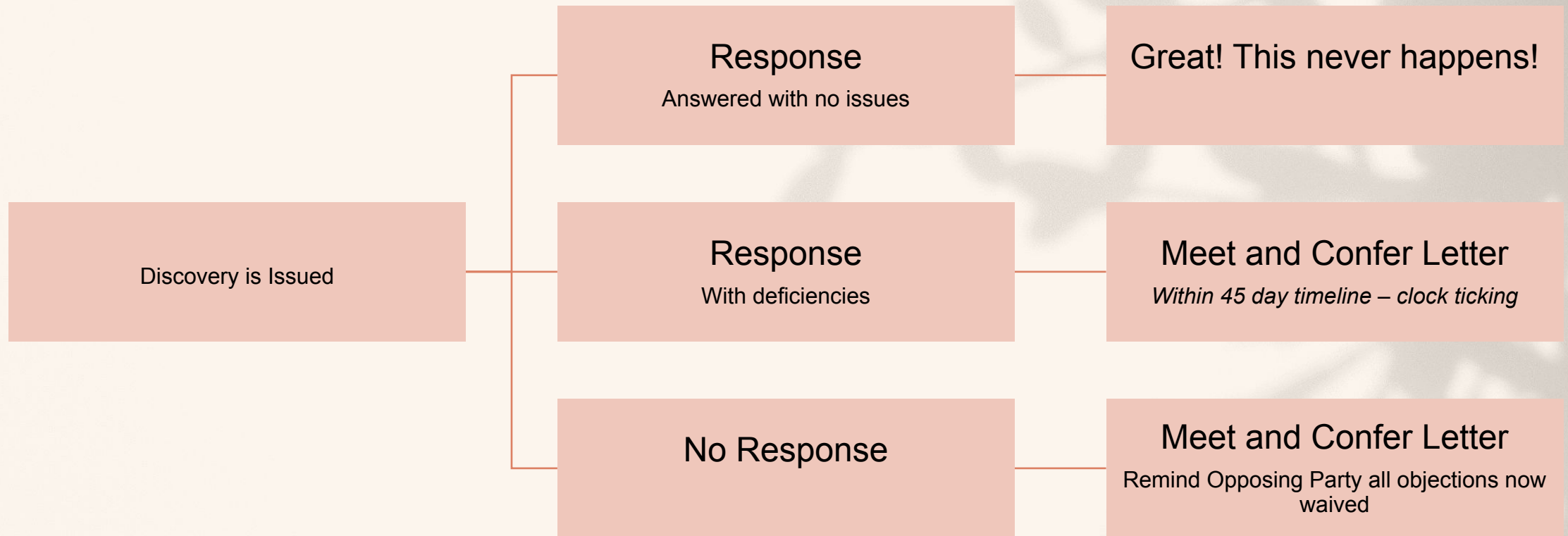
Parties must state the truth, the whole truth, and nothing but the truth in answering.

Answers cannot be evasive, and must include sufficient information to be clear, concise, and responsive.

Must make a good faith effort to obtain information.

Cannot simply state that you don't know an answer, but you may explain what you've done to obtain the information, and refer to the source which can provide the information.

# What Happens Next...



# Meet and Confer Letter

CCP 2016.040: A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

## Identification

State the tools which were propounded, the date they were issued, the date items were due, and the date of the response (if applicable)

## Deficiencies

Identify which specific items were insufficiently responded to, what was provided, & what is missing.

## Applicability of Objections

If there is an objection which does not apply, state that you would seek for this objection to be withdrawn.

## Waiver of Objections (If Applicable)

If the Opposing Party failed to respond, remind them that all objections are waived under CCP

## Deadline

Under the CCP, you only have 45 days from the date the insufficient responses were received to 1) issue the meet and confer letter and 2) file the Motion to Compel.

You **must** complete a Meet and Confer effort to be in compliance with filing requirements for a Motion to Compel.



# SUPPLEMENTAL RESPONSES

## REQUIRED INFORMATION

Identity of the propounding, demanding or requesting party

Identity of the responding party

Set Number being propounded or responded to

"Nature of the paper"

Each response must be identified by the same number or letter, and must be in the same sequence as the request, but the request does not need to be repeated.



# Motion to Compel



There are three types of motions to compel:

1. A motion to compel a response  
No answer from the opposing party  
No deadline.
2. A motion to compel further responses  
Incomplete answers from the other party  
Must be filed within 45 days after service of the response
3. A motion to compel compliance in accordance with a prior response  
No deadline



# Motion to Compel



## Filing the Motion

A motion to compel requires:

- Include the original demand, the original answer, and a proposed order, and a proof of service.
- Specific facts set forth showing good cause justifying the discovery (required for Requests for Production of Documents only, but suggested for all types)
- A meet and confer declaration
- A separate statement
  - Not required when there has been no response
  - Not required if the court has previously allowed the moving party to submit a concise outline of the discovery request and each response.



# The Separate Statement

A separate statement requires:

1. The text of the request, interrogatory, question, or inspection demand;
2. The text of each response, answer, or objection, and any further responses or answers;
3. A statement of the factual and legal reasons for compelling further responses, answers, or production as to each matter in dispute;
4. If necessary, the text of all definitions, instructions, and other matters required to understand each discovery request and the responses to it;
5. If the response to a particular discovery request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth; and
6. If the pleadings, other documents in the file, or other items of discovery are relevant to the motion, the party relying on them must summarize each relevant document.



Pro Tip – Write the separate statement for  
your meet and confer letter



# DEPOSITIONS



# Deposition Dos & Don'ts

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## DO

- Outline & think about MSJ
- Prep client
- Know facts
- Give witness admonitions
- Ask about discovery
- Use documents as exhibits & prep
- Make code complaint objections
- Make objections based on privileges
- Find your style

# Deposition Dos & Don'ts

Code	- Legal conclusion
Compliant	- Speculation
Objections	- Narrative
CCP	- Compound
2017.010	- Harassing
	- Incomplete hypo
	- Vague
	- Leading (if not adverse)
	- Unintelligible

# Deposition Dos & Don'ts

Non-Code  
Compliant  
Objections

- Speaking objections
- Answer known to propounding party
- Asked & answered
- Hearsay (CCP 20)
- Relevance (it depends)



# Deposition Dos & Don'ts

## Objections based on privilege

- DV counselor CEC 1037
- Human trafficking caseworker CEC 1038
- Sexual assault counselor CEC 1035-1036
- Attorney client CEC 950-62
- Marriage CEC 970-973 980-87
- Doctor-patient & therapist- patient CEC 990-1007
- D in criminal case CEC 930
- Self incrimination CEC 940
- Official information CEC 1040

\* Make timely or  
considered waived \*

# Deposition Dos & Don'ts

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## Don't

- Bully or be bullied
- Talk over court reporter
- Argue with witness or opposing counsel
- Recognize when to stop
- Don't over clarify impeachment nuggets
- Threaten to call the judge mid- depo

# DEPOSITION SUBPOENAS





# THE DATE OF PRODUCTION

**Production of documents only.** The date for production of a consumer's personal records must be at least *20 days* after the subpoena is issued or *15 days* after service on the custodian, whichever is later. [CCP §§1985.3\(d\), 2020.410\(c\)](#).

**Request for Records.** Specify what you are seeking in Attachment 3 of the SUBP-010 for record production.

**Notice to Consumer.** Notice must be given to the consumer whose records you are seeking, using judicial council form SUBP-025.





# Thank you

Please enjoy the  
handouts and use  
discovery responsibly!

**DISCOVERY CODE SECTIONS**  
**(All Codes are California Code of Civil Procedure)**

	<b>Interrogatories</b>	<b>Requests for Production</b>	<b>Requests for Admission</b>
<b>Definition</b>	N/A	N/A	2033.01
<b>Right to Propound</b>	2030.020	2031.020	2033.02
<b>Number Limit</b>	2030.030	N/A	2033.03
<b>Over limit</b>	2030.040	N/A	2033.04
<b>Limit Dec</b>	2030.050	N/A	2033.05
<b>Request Format</b>	2030.060	2031.030	2033.06
<b>Supplemental</b>	2030.070	2031.050	N/A
<b>Service</b>	2030.080	2031.040	2033.07
<b>Protective Order</b>	2030.090	2031.060	2033.08
<b>Answer Format</b>	2030.210	2031.210	2033.21
<b>Answer Format</b>	N/A	2031.280	N/A
<b>Answer Format - ESI</b>	N/A	2031.285	N/A
<b>Good Faith Effort to Answer</b>	2030.220	2031.220	2033.22
<b>Objections</b>	2030.230	2031.230	N/A
<b>Partially Object/Comply</b>	2030.240	2031.240	2033.23
<b>Verification</b>	2030.250	2031.250	2033.24
<b>Answer Deadline</b>	2030.260	2031.260	2033.25
<b>Extensions</b>	2030.270	2031.270	2033.26
<b>Not Filed</b>	2030.280	2031.290	2033.27
<b>Failure to Timely Respond</b>	2030.290	2031.300	2033.28
<b>Motion to Compel</b>	2030.300	2031.310	2033.29
<b>Amended Answers/Sanctions</b>	2030.310	2031.320	2033.3
<b>Usage of Discovery</b>	2030.410	N/A	2033.41
<b>Patents</b>	N/A	2031.510	N/A
<b>Motion to Admit</b>	N/A	N/A	2033.42

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Attorney for CLIENT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF CONTRA COSTA**

PARTY NAME

) Case No.: Case Number

Petitioner  
vs.

)

) **DECLARATION FOR ADDITIONAL  
DISCOVERY PURSUANT TO CIVIL  
CODE OF PROCEDURE § [2030.040 or  
2033.040]**

PARTY NAME

)

Respondent

)

I, Brittany Hendrix-Smith, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for \_\_\_\_\_, a party to this action or proceeding).
2. I am propounding to \_\_\_\_\_ the attached set of [interrogatories] / [requests for admissions].
3. This set of [interrogatories] / [requests for admissions] will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially prepared interrogatories permitted by Section [2030.030] / [2033.050] of the Code of Civil Procedure.
4. I have previously propounded a total of \_\_\_\_\_ [interrogatories] / [requests for admissions] to this party [, of which \_\_\_\_\_ interrogatories were not official form interrogatories].

1 5. This set of [interrogatories] / [requests for admissions] contains a total of \_\_\_\_\_  
2 [specially prepared interrogatories] / [requests].

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

5 7. I have personally examined each of the questions in this set of [interrogatories] / [requests  
6 for admissions].

7 8. This number of questions is warranted under Section [2030.040] / [2033.040] of the Code of  
8 Civil Procedure because \_\_\_\_\_. ([Here state each factor described in Section 2030.040  
9 that is relied on, as well as the reasons why any factor relied on is applicable to the instant  
10 lawsuit.] / [Here state the reasons why the complexity or the quantity of issues in the instant  
11 lawsuit warrant this number of requests for admission.])

12 9. None of the [questions] / [requests] in this set of [interrogatories] / [requests] is being  
13 propounded for any improper purpose, such as to harass the party, or the attorney for the  
14 party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost  
15 of litigation.

16  
17 I declare under penalty of perjury under the laws of California that the foregoing is true and correct,  
18 and that this declaration was executed on \_\_\_\_\_.

19 Date:

20  
21  
22 \_\_\_\_\_  
23 Brittany Hendrix-Smith, Attorney for CLIENT  
24  
25  
26  
27  
28