

DEMAND FOR INSPECTION

This module contains:

- **Demand for Inspection Outline**
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

JANE DOW,) **CASE NO. 6666666666**
)
Plaintiff(s),) **INSPECTION DEMAND**
)
vs.)
)
JOHN SMITH,)
)
Defendant(s).)

PROPOUNDING PARTY: Plaintiff Jane Doe

RESPONDING PARTY: Defendant John Smith

SET NUMBER: One (1)

Jane Doe demands that John Smith produce the documents, described below, on 06/12/2012 at 08:00 at 123 Melrose Place Santa Ana, CA 92702, and permit the attorneys for Jane Doe to inspect, copy them.

“DOCUMENT” means a “writing” as defined by Evidence Code §250.

The term AGREEMENT refers to the agreement entered into between plaintiff and defendant as alleged in the complaint.

If any documents are withheld from production on the ground of privilege, you must provide the following information as to each document in your response to this Demand:

- Date of document;
- Type of document;
- Name of the document’s author(s);
- Name of the recipient(s), including the names of those receiving copies; and

Objectives

In this Module, students will:

- ❖ Familiarize themselves with the rules governing Demands for Inspection
- ❖ Define and describe inspection of documents and other physical evidence
- ❖ Describe advantages and disadvantages
- ❖ Discuss procedures, method and limits to an inspection demand
- ❖ Discuss responses and protective orders
- ❖ Prepare Inspection Demands

DEMAND FOR INSPECTION OUTLINE

- **Defined**
 - A party can request another party for the inspection of documents, tangible things, and other physical evidence that are in the possession, custody, or control of any party in the action.

 - Demand for Inspection of documents, things and places is served on parties and may compel a party to produce documents, records and other tangible evidence for copying, inspecting, testing and measuring. It may also compel entry to land and other structures for purposes of inspection, copying, testing and measuring (CCP Section 2031.010, et seq.)

- **Advantages**
 - Allows a party to review and inspect physical items.
 - The inspection is generally at the demanding party's convenience.
 - Unlimited number of demands.
 - Includes real property and land.

- **Timing/Hold Period**
 - Plaintiff can serve the Inspection Demand 10 days after service of summons and complaint.
 - Defendant can serve the Inspection Demand any time after service of summons and complaint or has made an appearance in the action.
 - 30 days to respond, depending how service was effectuated.
 - Cut off: 30 days before trial; 15 days before trial for any motions.

- **Parties vs. Non Parties**
 - The Inspection Demand can only be propounded on parties.
 - A party can obtain documents from non-parties through a deposition subpoena (See Module on Depositions for further discussion).
 - Can request an inspection demand of any item under that party's possession, custody or control.

- **What Can Be Inspected?**
 - Documents:
 - Anything in writing
 - Handwriting
 - Typewritten
 - Printed
 - Photo
 - Audio
 - Visual
 - Microfiche

- Every other means of recording upon any tangible thing, or any form of communication or representation or combination thereof
 - o Tangible things
 - Blood/tissue samples
 - Handwriting samples
 - Fingerprints
 - Building materials
 - Products/parts
 - o Land
 - Can request to inspect the land for the purposes to enter, measure, survey, photograph, test, remove soil samples.
- **No Limit as to Number**
 - o There is no limit as to the number of requests that can be demanded.
 - Each demand request must be relevant and have good cause.
 - Each demand must be reasonably particularized.
- **Form CCP Section 2031.030**
 - o Written request
 - o Consecutive number
 - o Identify propounding party and responding party
 - o Set number
 - o Time for inspection
 - o Each demand request for the different documents, tangible things or the request for the entry of land must be separately set forth in the demand.
- **Content CCP Section 2031.030**
 - o Description of document must be “reasonably particularized.” This means it must be clear and precise regarding what you are requesting to be inspected.
 - o Time for inspection – at least 30 days after service of the demand, plus mail.
 - o Time and place must be reasonable. The responding party may have to make the documents or item to be inspected available to the propounding party for copying and/or review.
- **Responses CCP Section 2031.260**
 - o 30/30 Rule
 - The responding party must respond whether or not they are going to comply with the inspection. Within the same 30 day period, the responding party must actually comply with the request. Therefore, it’s a good idea to set the date for the actual production more than 30 days after service of the demand. This will allow the responding party to comply with the request.
 - o Identify objections. State specific grounds.
 - Relevancy

- Privilege/work product
 - Confidentiality
 - Vagueness/ambiguous term
 - Burdensome/oppressive
 - Excess number of questions
 - Improper form
 - Speculation
 - Requires expert opinion
 - Requires a legal conclusion which the responding party cannot assert
- o The response must be verified (signed) by responding party. It's must be under oath under penalty of perjury.
- o Extensions: You can request more time to respond from the opposing party. It must always be confirmed in writing by the opposing party.
 - All objections must also be affirmatively preserved and confirmed in writing or they are effectively waived.
- o Inability to comply with the demand request?
 - You will need to show either:
 - Diligent search done to locate the inspection demand requested;, or
 - The item never existed, was lost, stolen, or was inadvertently destroyed.
- o Responding Party can file Protective Orders
 - Basis includes:
 - Protect confidential or privileged information
 - Excuse production
 - Extend time for production
 - Review documents in camera
 - Change terms: place; time
- **Options on Responding to Interrogatories**
 - o Provide full responses
 - o Assert objections
 - o Respond in part and assert objections in part
 - o File a motion for Protective Orders
- **Enforcement of Demand**
 - o Motion to Compel if:
 - No response
 - Responding party failed to provide any form of responses.
 - Waives objections.
 - Do not need to meet and confer.
 - No time limit to bring motion. However, must be heard at least 15 days before trial.
 - No good cause requirement.

- Sanctions, unless substantial justification for refusal to comply.
- Inadequate response:
 - Responding party either responded in part, asserted improper objections, or provided inadequate information.
 - 45 day limit to bring motion after service of responses.
 - Meet and confer required.
- Sanctions, unless substantial justification for either no responses or for the inadequate responses. Sanctions can include:
 - Monetary
 - Issue preclusion
 - Evidence preclusion
 - Judgment of case in favor of disobeying party
- **Meet and Confer:**
 - This is procedure whereby a party must make all good faith attempts to resolve the discovery dispute with the opposing party (or their attorney if they are represented) before filing a motion for a Protective Order or a Motion to Compel.

STRATEGIES AND TACTICS RE INSPECTION DEMANDS

Following from: [Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8H-1](#)

- Advantages
 - Allows inspection at the convenience of the demanding party (rather than “under the gun” at the opposing party's deposition; see ¶ 8:1434).
 - Can compel the opposing party to produce documents, etc. at deposition of some other party or witness (rather than only at that party's own deposition).
 - No limit on the number of demands that can be served (unlike interrogatories and requests for admissions).
 - The only discovery procedure for gaining entrance onto opposing party's land (where relevant to the action).
- Disadvantages
 - Cannot be used to obtain inspection of documents, etc. from nonparties.
 - If the demand is not complied with voluntarily, the court will not order production unless “good cause” is shown.
 - Only monetary sanctions are available for failure to comply (unlike deposition subpoenas, which are enforceable by contempt).

CIVILITY

- Document requests should be used only to seek those documents that are reasonably needed to prosecute or defend an action;
- An attorney should not make demands to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding;
- If an attorney inadvertently receives a privileged document, the attorney should promptly notify the producing party that the document has been received (see also ¶ 8:199.16);
- In responding to a document demand, an attorney should not intentionally misconstrue a request in such a way as to avoid disclosure or withhold a document on the grounds of privilege;
- An attorney should not produce disorganized or unintelligible documents, or produce documents in a way that hides or obscures the existence of particular documents;
- An attorney should not delay in producing a document in order to prevent opposing counsel from inspecting the document prior to or during a scheduled

deposition or for some other tactical reason. [State Bar California Attorney Guidelines of Civility and Professionalism § 9(b)]

TABLE OF CODES: CA CIV PRO Pt. 4 T. 4 CH. 14

Chapter 14. Inspection, Copying, Testing, Sampling, and Production of Documents, Electronically Stored Information, Tangible Things, Land, and Other Property

Article 1. Inspection Demand.

- CA CIV PRO Pt. 4, T. 4, Ch. 14, Art. 1, Refs & Annos
- [§ 2031](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005
- [§ 2031.010](#). Persons Subject to Demand; Scope of Demand; Entrance on Land or Property; Electronically Stored Information
- [§ 2031.020](#). Time to Make Demand; Inspection, Copying, Testing, or Sampling Prior to Time Allowed
- [§ 2031.030](#). Form and Content of Demand
- [§ 2031.040](#). Service of Documents
- [§ 2031.050](#). Supplemental Demands; Limitations and Restrictions; Court Order
- [§ 2031.060](#). Protective Order; Time to Demand; Meet and Confer; Authorized Court Action; Electronically Stored Information; Monetary Sanctions
- [§ 2031.1](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005

Article 2. Response to Inspection Demand

- CA CIV PRO Pt. 4, T. 4, Ch. 14, Art. 2, Refs & Annos
- [§ 2031.2](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005
- [§ 2031.210](#). Content and Form of Response
- [§ 2031.220](#). Statement of Compliance in Full or in Part
- [§ 2031.230](#). Statement of Inability to Comply; Contents

- [§ 2031.240](#). Partial Objection to Demand; Statement of Compliance or Representation of Inability to Comply; Privilege Log
- [§ 2031.250](#). Signatures; Oath; Officers or Agents; Responses with Objections
- [§ 2031.260](#). Time to Respond
- [§ 2031.270](#). Extension of Time to Respond; Agreement of the Parties
- [§ 2031.280](#). Production of Documents; Form; Data Translation
- [§ 2031.285](#). Electronically Stored Information; Privileged Information or Attorney Work Product
- [§ 2031.290](#). Original Demand, Response and Service Documents; Custody of Documents; Record Retention
- [§ 2031.300](#). Untimely Responses; Waiver; Motion to Compel Response; Monetary Sanctions
- [§ 2031.310](#). Motion to Compel Further Response; Form and Content; Time to Bring Motion; Electronically Stored Information; Monetary Sanctions; Failure to Obey Court Order
- [§ 2031.320](#). Failure to Produce Items for Inspection, Copying, Testing, or Sampling; Order Compelling Compliance; Monetary Sanctions; Failure to Obey Court Order

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

- CA CIV PRO Pt. 4, T. 4, Ch. 14, Art. 3, Refs & Annos
- [§ 2031.5](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005
- [§ 2031.510](#). Land Patented or Granted by the State; Time to Disclose

CODE OF CIVIL PROCEDURE

SECTION 2031.010. – 20131.060.

❖ Article 1. Inspection Demand.

2031.010. Persons subject to demand; scope of demand; entrance on land or property; electronically stored information

(a) Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by inspecting, copying, testing, or sampling documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control of any other party to the action.

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

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

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

(e) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, **to inspect, copy, test, or sample electronically stored information in the possession, custody, or control of the party on whom demand is made.**

CODE ANALYSIS

- ✓ Under 2031.010 (a), party can inspect:
 - o Documents
 - o Tangible things: It includes physical evidence such as handwriting, exemplars, fingerprints and written statements.
 - o Land
 - o Electronically stored information in the possession, custody, or control of any other party to the action
- ✓ Under 2031.010 (b), Party A may demand that:

- o Any other party (including an adverse party or co-party) produce and permit Party A OR someone acting on Party A's behalf
- o To inspect and to copy a document that is in the possession, custody, or control of the party that Party A made the demand on
- ✓ For purposes of the Code of Civil Procedure, a "document" is a writing as defined by [Evid. Code, § 250](#). [[Code Civ. Proc., § 2016.020, subd. \(c\)](#)]
 - o A "writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, electronically stored information, and every other means of recording on any tangible thing, any form of communication or representation including letters, words, pictures, sounds, symbols, and any combination of such forms of communication and any record thereby created. [[Code Civ. Proc., § 1985.8, subd. \(a\)\(1\)](#)]
 - o Thus, documents subject to inspection include any form of tangible expression, such as audio and video recordings, photos, microfilm, drawings, graphs, charts, and computerized information. (From [Cal. Civ. Prac. Procedure § 13:215](#))
- ✓ For 2031.010(c),
 - o For destructive testing, unless the parties agree otherwise, the party demanding such tests must pay the costs.

2031.020. Time to make demand; inspection, copying, testing, or sampling prior to time allowed

(a) A defendant may make a demand for inspection, copying, testing, or sampling **without leave of court at any time**.

(b) A plaintiff may make a demand for inspection, copying, testing, or sampling without leave of court at any time that is **10 days after the service of the summons on, or appearance by, the party to whom the demand is directed**, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make a demand for inspection, copying, testing, or sampling without leave of court at any time that is five days after service of the summons on, or appearance by, the party to whom the demand is directed, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make a demand for inspection, copying, testing, or sampling at an earlier time.

CODE ANALYSIS

- ✓ Under 2031.020. (a),
 - o A party can serve demand for inspection anytime during the lawsuit.
- ✓ Under 2031.020.(b),

- o A party can serve demand for inspection 10 days after party is served with the summons OR after the other party has made an appearance in the action, whichever comes first.
- ✓ Under 2031.020.(c),
 - o Exception is in unlawful detainer actions, the “hold” on plaintiff’s demand is only 5 days after service.

2031.030. Form and content of demand

(a)(1) A party demanding inspection, copying, testing, or sampling **shall number** each set of demands **consecutively**.

(2) A party demanding inspection, copying, testing, or sampling of electronically stored information may specify the form or forms in which each type of electronically stored information is to be produced.

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

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

(1) Designate the documents, tangible things, land or other property, or electronically stored information to be inspected, copied, tested, or sampled either by specifically describing each individual item or by **reasonably particularizing** each category of item.

(2) Specify a **reasonable time for the inspection, copying, testing, or sampling that is at least 30 days after service of the demand**, unless the court for good cause shown has granted leave to specify an earlier date. In an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the demand shall specify a reasonable time for the inspection, copying, testing, or sampling that is at least five days after service of the demand, unless the court, for good cause shown, has granted leave to specify an earlier date.

(3) Specify a **reasonable place** for making the inspection, copying, testing, or sampling, and performing any related activity.

(4) Specify any inspection, copying, testing, sampling, or related activity that is being demanded, as well as the manner in which that activity will be performed, and whether that activity will permanently alter or destroy the item involved.

CODE ANALYSIS

Sample of form at this link: [Form](#)

- ✓ Under 2031.030.(a), specify the form or forms:

- o Common examples of forms in which ESI may be demanded are paper printouts (“hard copy”), native format, PDF and TIFF;
- o Alternatively, a demanding party may specify that documents be produced in “Microsoft Word” format; that e-mails be produced in “Microsoft Outlook” format; that financial spreadsheets be produced in “Microsoft Excel” format; and that graphs or images be produced in “Adobe” format.
- ✓ Under 2031.030.(b), an example:
 - o PROPOUNDING PARTY: PARTY A
RESPONDING PARTY: PARTY B
SET NO.: ONE (1)
 - o Example: “DEFENDANT JOHN SMITH'S FIRST SET OF DEMANDS FOR DOCUMENT PRODUCTION ON PLAINTIFF ROBERTA BROWN”
- ✓ Under 2031.030.(c)(1),
 - o Ex: Thus, requests for “all financial records” or “all correspondence” or “all documents relating to liability” may be objectionable for inadequate description. They embrace too many subcategories to have much meaning.
- ✓ Under 2031.030.(c)(2),
 - o The date designated in the demand for inspection must be at least 30 days after the demand is served (5 days in unlawful detainer actions).
 - o The party to whom the demand is served must also respond to the demand, stating whether it will comply with the demand for inspection on the date demanded. That response is due within 30 days (5 days in unlawful detainer actions) after the demand is served (even if the date for production is later).
- ✓ Under 2031.030.(c)(4),
 - o Description of document must be clear and precise regarding what you are requesting.

2031.040. Service of documents

The party making a demand for inspection, copying, testing, or sampling **shall serve a copy of the demand on the party to whom it is directed and on all other parties who have appeared in the action.**

2031.050. Supplemental demands; limitations and restrictions; court order

(a) In addition to the demands for inspection, copying, testing, or sampling permitted by this chapter, a party may propound a supplemental demand to inspect, copy, test, or sample any later acquired or discovered documents, tangible things, land or other property, or electronically stored information in the possession, custody, or control of the party on whom the demand is made.

(b) A party may propound a supplemental demand for inspection, copying, testing, or sampling twice before the initial setting of a trial date, and, subject to the time limits on

discovery proceedings and motions provided in Chapter 8 (commencing with Section 2024.010), once after the initial setting of a trial date.

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

CODE ANALYSIS

- ✓ Under 2031.050.(a),
 - o Supplemental demands may be served to obtained documents or things acquired or discovered by the adverse party after earlier demands were served.
- ✓ Under 2031.050.(b),
 - o Demands may be made: twice prior to initial setting of a trial date, and subject to the discovery “cut off” date, once after the initial setting of a trial date.
- ✓ Under 2031.050.(c),
 - o For good cause shown, the court may allow a party to propound additional supplemental demands for inspection. This allows for updating of previously requested information

2031.060. Protective order; time to demand; meet and confer; authorized court action; electronically stored information; monetary sanctions

(a) When an inspection, copying, testing, or sampling of documents, tangible things, places, or electronically stored information has been demanded, the party to whom the demand has been directed, and any other party or affected person, may **promptly move for a protective order. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.**

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

- (1) That all or some of the items or categories of items in the demand need not be produced or made available at all.
- (2) That the time specified in Section 2030.260 to respond to the set of demands, or to a particular item or category in the set, be extended.
- (3) That the place of production be other than that specified in the demand.
- (4) That the inspection, copying, testing, or sampling be made only on specified terms and conditions.

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

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

(c) The party or affected person who seeks a protective order regarding the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(d) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery **if the demanding party shows good cause**, subject to any limitations imposed under subdivision (f).

(e) **If the court finds good cause** for the production of electronically stored information from a source that is not reasonably accessible, **the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.**

(f) The **court shall limit the frequency or extent of discovery** of electronically stored information, even from a source that is reasonably accessible, **if the court determines that any of the following conditions exist:**

(1) It is possible to obtain the information **from some other source that is more convenient, less burdensome, or less expensive.**

(2) The discovery sought is **unreasonably cumulative or duplicative.**

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The **likely burden or expense** of the proposed discovery **outweighs the likely benefit**, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

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

(h) Except as provided in subdivision (i), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(i)(1) Notwithstanding subdivision (h), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

CODE ANALYSIS

- ✓ Under 2031.060.(a),
 - o Instead of responding to the demand, the party to whom it is directed may seek a protective order, or any third party whose privacy would be infringed by disclosure of documents.
 - o Noticed motion is required, including a declaration showing a “reasonable and good faith attempt” to resolve the disputed issues outside of court.
 - o The affected party is required to move “promptly” for a protective order.
- ✓ Under 2031.060(b)(1): Excuse Production
- ✓ Under 2031.060(b)(2):Extend time for Production
- ✓ Under 2031.060(b)(3):Change place
- ✓ Under 2031.060(b)(4):Change Terms and Conditions
- ✓ Under 2031.060(b)(5):Protect Confidential or Privileged Information

CODE OF CIVIL PROCEDURE

SECTION 2031.2. – 20131.320.

❖ Article 2. Response to Inspection Demand.

2031.210. Content and form of response

(a) The party to whom a demand for inspection, copying, testing, or sampling has been directed shall respond separately to each item or category of item by any of the following:

(1) **A statement** that the party will comply with the particular demand for inspection, copying, testing, or sampling by the date set for the inspection, copying, testing, or sampling pursuant to paragraph (2) of subdivision (c) of Section 2031.030 and any related activities.

(2) A **representation** that the party lacks the ability to comply with the demand for inspection, copying, testing, or sampling of a particular item or category of item.

(3) An **objection** to the particular demand for inspection, copying, testing, or sampling.

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

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

(d) If a party objects to the discovery of electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense and that the responding party will not search the source in the absence of an agreement with the demanding party or court order, the responding party shall identify in its response the types or categories of sources of electronically stored information that it asserts are not reasonably accessible. By objecting and identifying information of a type or category of source or sources that are not reasonably accessible, the responding party preserves any objections it may have relating to that electronically stored information.

CODE ANALYSIS

- ✓ *Content:* The party to whom the CCP § 2031.010 demand is directed must respond separately to each item in the demand by one of the following:
 - o Agreement to comply: A statement that the party will comply by the date set for inspection with the particular demand for inspection, testing, etc.;
 - o Representation of inability to comply: A statement that the party lacks the ability to comply with the particular demand; or

- o Objections: An objection to all or part of the demand. [CCP § 2031.210(a)]
- ✓ If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or representation of inability to comply. [CCP § 2031.240(a)] (General objections to the entire request are unauthorized and constitute discovery abuse; see ¶ 8:1071, dealing with interrogatories).
- ✓ Under 2031.210.(b),
 - o Example: DEFENDANT MARY BROWN'S RESPONSE TO PLAINTIFF PAUL BLACK'S DEMANDS FOR DOCUMENT PRODUCTION, SET NO. 3
- ✓ Under 2031.210(d)
 - o The responding party may object to discovery of electronically-stored information (ESI) on the ground that the source is "not reasonably accessible" because of "undue burden or expense," and may refuse to search for it in the absence of a court order.
 - o Response must identify the types of categories of ESI that the responding party claims are not reasonably accessible

2031.220. Statement of compliance in full or in part

A statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.

CODE ANALYSIS

- ✓ *Response must be rather specific as to what is agreed to. It must state:*
 - o That the production and inspection demanded will be allowed (in whole or in party);
- AND
- o All documents or things in the demanded category that are in the responding party's possession, custody, or control will be produced (except to the extent of any objections)

2031.230. Statement of inability to comply; contents

A **representation of inability to comply** with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category 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. The statement shall set forth the name and address of any natural person or organization

known or believed by that party to have possession, custody, or control of that item or category of item.

CODE ANALYSIS

✓ *Inability to Comply:*

- o That a diligent search and reasonable inquiry has been made in an effort to locate the item demanded; and
- o The reason the party is unable to comply: e.g., the document
 - Never existed; or
 - Has been lost or stolen; or
 - Has been destroyed; or
 - Is not in the possession, custody or control of the responding party...in which case, the response must state the name and address of anyone believed to have the document

2031.240. Partial objection to demand; statement of compliance or representation of inability to comply; privilege log

(a) If **only part of an item or category of item** in a demand for inspection, copying, testing, or sampling is **objectionable**, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category.

(b) **If the responding party objects to the demand** for inspection, copying, testing, or sampling of an item or category of item, the response shall do both of the following:

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

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

(c)(1) If an objection is based on a claim of privilege or a claim that the information sought is protected work product, the response shall provide sufficient factual information for other parties to evaluate the merits of that claim, including, if necessary, a privilege log.

(2) It is the intent of the Legislature to codify the concept of a privilege log as that term is used in California case law. Nothing in this subdivision shall be construed to constitute a substantive change in case law.

CODE ANALYSIS

- ✓ Under 2031.240.(b)(2),
 - o Set forth the specific ground for objection, including claims of privilege or work product protection
- ✓ Under 2031.240.(c)(1)
 - o Privilege Log: identifies each document for which a privilege or work product protection is claimed, its author, recipients, date of production, and the specific privilege or work product protection claimed. Privilege Log needs to be specific to determine whether each document is privileged or is not in fact privileged.
- ✓ [Sample Privilege Log](#)

PRIVILEGE LOG

Log Number	Discovery Reference Or Exhibit Number	Document Description	Identity/ Position of Author	Identities/ Positions of Recipients	Privilege Claimed	Present Location
1	Plaintiff's Inspection Demand, dated 6/14/xx Item #14	Letter from Tyler to Benoit dated 3/8/xx	Mary Tyler, Corporate Counsel of def. Roland Paper Co.	Marcus Benoit, Marketing Analyst (Benoit & Assoc.) Consultant to Roland	Attorney work product	Ketchum & Bly Counsel for def. Roland Paper Co.
2	Plaintiff's Inspection Demand, dated 6/14/xx Item #27	Report from Tyler to Roland, dated 4/25/xx	Mary Tyler, Corporate Counsel of def. Roland Paper Co.	Max Roland, pres.; Marta Stuart, v.p. for marketing; Jim Barrett, marketing mgr	Attorney-client; work product	Ketchum & Bly; Copies: Tyler files, Roland corp. files

2031.250. Signatures; oath; officers or agents; responses with objections

(a) The **party** to whom the demand for inspection, copying, testing, or sampling is directed **shall sign the response under oath unless the response contains only objections.**

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

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

2031.260. Time to respond

(a) **Within 30 days after service** of a demand for inspection, copying, testing, or sampling, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the

demand, the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom a demand for inspection, copying, testing, or sampling is directed shall have at least five days from the date of service of the demand to respond, unless on motion of the party making the demand, the court has shortened the time for the response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response.

CODE ANALYSIS

- ✓ Under 2031.260.(a),
 - o Whether or not they are not going to comply with the inspection. Can set the date for actual production more than 30 days after service of the demand.
 - o Response is due 30 days after service of the demand (extended where served by mail, overnight delivery or fax or electronically; see see CCP §§ 1010.6(a)(4), 1013, ¶ 9:87 ff.). [CCP §§ 2031.260, 2016.050]. Exception: in unlawful detainer actions, response is due within 5 days after service of the demand
 - o If the last day falls on a weekend or holiday, the time limit is extended to the next court day closer to the trial date.
 - o The court can extend the time for response on “motion” by the party affected.

2031.270. Extension of time to respond; agreement of the parties

(a) The party demanding inspection, copying, testing, or sampling and the responding party may agree to extend the date for the inspection, copying, testing, or sampling or the time for service of a response to a set of demands, or to particular items or categories of items in a set, to a date or dates beyond those provided in Sections 2031.030, 2031.210, 2031.260, and 2031.280.

(b) This agreement may be informal, **but it shall be confirmed in a writing** that specifies the extended date for inspection, copying, testing, or sampling, or for the service of a response.

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

CODE ANALYSIS

- ✓ Under 2031.270.,
 - o Parties may stipulate to an extension. The agreement may be informal, but has to be confirmed in writing stating the date when the response is due. Unless the stipulation provides otherwise, it extends the right to object to the demand

2031.280. Production of documents; form; data translation

(a) Any documents produced in response to a demand for inspection, copying, testing, or sampling shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand.

(b) The documents shall be produced on the date specified in the demand pursuant to paragraph (2) of subdivision (c) of Section 2031.030, unless an objection has been made to that date. If the date for inspection has been extended pursuant to Section 2031.270, the documents shall be produced on the date agreed to pursuant to that section.

(c) If a party responding to a demand for production of electronically stored information objects to a specified form for producing the information, or if no form is specified in the demand, the responding party shall state in its response the form in which it intends to produce each type of information.

(d) Unless the parties otherwise agree or the court otherwise orders, the following shall apply:

(1) If a demand for production does not specify a form or forms for producing a type of electronically stored information, the responding party shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

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

CODE ANALYSIS

- ✓ Under 2031.280.(a),
 - o Documents must be produced either:
 - as they are kept in the usual course of business, or
 - sorted and labeled to correspond with the categories in the document demand.
- ✓ Under 2031.280(e),

- o Reasonable expense of translating the data into reasonable usable form must be paid by the demanding party.

CODE ANALYSIS

- ✓ The “clawback” procedure applies whether the privileged information was inadvertently or intentionally produced. Normally, a privilege is waived by intentional disclosure of the privileged information by a party entitled to invoke the privilege
- ✓ Under 2031.285.(a),
 - o An oral OR written notice is sufficient
- ✓ Under 2031.285.(b),
 - o Receiving party must “immediately sequester the information” and either return it and all copies, or present the information to the court “conditionally under seal” for judicial determination of the privilege or work product claim.
- ✓ Under 2031.2859.(c)(1),
 - o Party must not use or disclose the information before resolution of the motion
- ✓ (c)(2),
 - o If it disclosed the information before being notified of the privilege or work product claim, it must immediately take reasonable steps to retrieve the information
- ✓ Time Limit: motion must be made within 30 days after the party received notice of the claim

2031.285. Electronically stored information; privileged information or attorney work product

(a) If electronically stored information produced in discovery is subject to a claim of privilege or of protection as attorney work product, **the party making the claim may notify any party that received the information of the claim and the basis for the claim.**

(b) After being notified of a claim of privilege or of protection under subdivision (a), a party that received the information shall immediately sequester the information and either return the specified information and any copies that may exist or present the information to the court conditionally under seal for a determination of the claim.

(c)(1) Prior to the resolution of the motion brought under subdivision (d), a party shall be precluded from using or disclosing the specified information until the claim of privilege is resolved.

(2) A party who received and disclosed the information before being notified of a claim of privilege or of protection under subdivision (a) shall, after that notification, immediately take reasonable steps to retrieve the information.

(d)(1) If the receiving party contests the legitimacy of a claim of privilege or protection, he or she may seek a determination of the claim from the court by **making a motion within 30 days of receiving the claim and presenting the information to the court conditionally under seal.**

(2) Until the legitimacy of the claim of privilege or protection is resolved, the receiving party shall preserve the information and keep it confidential and shall be precluded from using the information in any manner.

2031.290. Original demand, response and service documents; custody of documents; record retention

(a) The demand for inspection, copying, testing, or sampling, and the response to it, shall not be filed with the court.

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

2031.300. Untimely responses; waiver; motion to compel response; monetary sanctions

If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

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

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

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

(c) Except as provided in subdivision (d), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to a demand for inspection, copying, testing, or sampling, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the

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

(d)(1) Notwithstanding subdivision (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as a result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

CODE ANALYSIS

- ✓ Under 2031.300, A motion to compel is used to enforce compliance with a demand:
 - o Where no response has been made, the motion to compel is a response (CCP §2031.300)
 - o Where responses have been made but they are not satisfactory to the demanding party, the motion is to compel further responses (CCP §2031.310)
 - o Where an agreement to comply has been made, but compliance is not forthcoming, the motion is to compel compliance (CCP §2031.320)

2031.310. Motion to compel further response; form and content; time to bring motion; electronically stored information; monetary sanctions; failure to obey court order

(a) On receipt of a response to a demand for inspection, copying, testing, or sampling, the demanding party may move for an order compelling further response to the demand if the demanding party deems that any of the following apply:

(1) A statement of compliance with the demand is incomplete. What is this?

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

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

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

(1) The motion shall set forth specific facts showing good cause justifying the discovery

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

(c) Unless notice of this motion is given within 45 days of the service of the verified response, or any supplemental verified response, or on or before any specific later date

to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the demand.

(c) UNLESS notice of motion is given w/in 45 days after service of the verified response OR any supplemental Response OR on or before any specific later date both parties have agreed to in writing, The demanding party waives any right to compel a further response to the demand if the party misses the 45 day deadline.

(d) In a motion under subdivision (a) relating to the production of electronically stored information, the party or affected person objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.

(e) If the party or affected person from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (g).

(f) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(g) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(h) Except as provided in subdivision (j), the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

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

(j)(1) Notwithstanding subdivisions (h) and (i), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

CODE ANALYSIS

- ✓ Under 2031.310, A motion to compel can be utilized to attack a response containing:
 - o Objections; or
 - o An agreement to comply that is incomplete; or
 - o A statement of inability to comply that is incomplete or evasive

2031.320. Failure to produce items for inspection, copying, testing, or sampling; order compelling compliance; monetary sanctions; failure to obey court order

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

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

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

(d)(1) Notwithstanding subdivisions (b) and (c), absent exceptional circumstances, the court shall not impose sanctions on a party or any attorney of a party for failure to provide electronically stored information that has been lost, damaged, altered, or overwritten as the result of the routine, good faith operation of an electronic information system.

(2) This subdivision shall not be construed to alter any obligation to preserve discoverable information.

CODE OF CIVIL PROCEDURE SECTION 2031.5. - 20131.510.

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

2031.510. Land patented or granted by the state; time to disclose

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

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

INSPECTION OF DEMAND REVIEW QUESTIONS

- What is the definition of inspection of documents?
- Who can request an inspection demand?
- Can an inspection demand be propounded on non-parties?
- What are the three different inspection demands that can be propounded?
- What is an example of a “writing”?
- What is considered a “tangible thing”?
- What specific inspections can be requested relating to land?
- What is the first date a plaintiff may serve demands for inspection?
- What is the first date a defendant may serve the demand for inspection?
- When are responses due for an inspection demand?
- Is there additional time given if the inspection demand was served by mail?
- Is there a limit to the number of demands for inspection that can be propounded?
- What should you do if the opposing party does not respond to your inspection request?
- When can a responding party file for a protective order?
- What are some objections that can be asserted?
- When is a motion to compel available to the propounding party?
 - Is there a time period in which a motion to compel must be filed?