Tab 17:

Documentary Evidence: From Subpoena to Admission

Presenters

Hilary Martin Masson and Fatini, LLP.

Richard Masson Masson and Fatini, LLP.

Moderator

Cynthia Holton Public Law Center

Documentary Evidence: From Subpoena to Admission

Presenters: Richard Masson, Esq. and Hilary Martin with Masson & Fatini, LLP Moderator: Cynthia Holton with the Public Law Center

Deposition Subpoena

This is the process for a Deposition Subpoena:

- 1. Notice to Consumer or Employee and Objection
- Deposition Subpoena for Production of Business Records
- 3. Attachment 3
- Certificate of Compliance
- Letter to company that we are subpoenaing
- Check for \$15.00

The Notice to Consumer and Deposition Subpoena needs to be served on the opposing party/counsel. (5 days + 5 for mail). Calendar this date.

If the opposing party does not object then we have to personally serve the Notice to Consumer, Civil Subpoena, Certificate of Compliance, letter to the company, and a \$15.00 check on the place we are Subpoenaing.

Make sure you get or fill out the Proof of Service (the last page of the Deposition Subpoena).

Calendar 15 days from the date the subpoena was served, as the Company's last day to produce the documents.

	SUBP-025
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name. State Bar number. and address): Richard E. Masson, Esq. SBN: 198331 Masson & Fatini. LLP Two Park Plaza, Suite 980 Irvine, CA 92614	FOR COURT USE ONLY
TÉLEPHONE NO.: (949)852-8121 FAX NO. (Optional): (949)852-8118 E-MAIL ADDRESS (Optional): RMASSON@MASSONFatini.com	
	-
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 341 The City Drive South	
MAILING ADDRESS: P. O. Box 14171	
CITY AND ZIP GODE: Orange, 92863-1571	
BRANCH NAME: Lamoreaux Justice Center (LJC)	
PLAINTIFF/ PETITIONER: JOHN BOB SMITH	CASE NUMBER:
DEFENDANT/ RESPONDENT: JANE DOE SMITH	
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3,1985.6)	09D123456
NOTICE TO CONSUMER OR EMPLOYEE	
TO (name): Jane Doe Smith	
 PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): John Bob Smith SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify) 	<i>date):</i> March 16, 2010
The records are described in the subpoena directed to witness (specify name and addre are sought): Custodian of Records of Bank of America 1000 Bank Road, Irvine, Califo	

A copy of the subpoena is attached.

- 2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED. IN ITEM a. OR b. BELOW:
 - a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the **witness** and the **deposition officer** named in the subpoena at least five days before the date set for production of the records.
 - b. If you are not a party to this action, you must serve on the requesting party and on the witness, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.
- 3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date: February 19, 2010

Richard E. Masson, Esg.		
(TYPE OR PRINT NAME)		ARTY X ATTORNEY)
OBJECTION BY NON-	PARTY TO PRODUCTION OF RECORDS	
1. I object to the production of all of my records speci-	fied in the subpoena.	
2. I object only to the production of the following spec	ified records:	
3. The specific grounds for my objection are as follows:		
Date:		
	▶	
(TYPE OR PRINT NAME)	(SIGNATURE	Ξ)
	(Proof of service on reverse)	Page 1 of 2
Form Adopted for Mandatory Use Judicial Council of California SUBP-025 [Rev. January 1, 2008]	ER OR EMPLOYEE AND OBJECTION Pr	roDoc [®] Code of Civil Procedure. §§ 1985.3. 1985.6. 2020.010–2020.510 www.courtinfo.ca.gov

		CASE NUMBER:
PLAINTIF	F/PETITIONER: JOHN BOB SMITH	
DEFENDANT/	RESPONDENT: JANE DOE SMITH	09D123456
	PROOF OF SERVICE OF NOTICE TO CONSUMER OF (Code Civ. Proc., §§ 1985.3, Personal Service	
1. At the time	of service I was at least 18 years of age and not a party to t	
	copy of the Notice to Consumer or Employee and Objection a	
	Personal service. I personally delivered the Notice to Consur-	
	 Name of person served: Address where served: 	(3) Date served:(4) Time served:
(2	2) Address where served.	(4) Time Served.
	Iail. I deposited the <i>Notice to Consumer or Employee and Ob</i> ith postage fully prepaid. The envelope was addressed as fol	
	 Name of person served: Jane Doe Smith 	(3) Date of mailing: February 19, 2010
	2) Address: 9876 Cherry Lane	(4) Place of mailing <i>(city and state)</i> :
.	Costa Mesa, California 90033	Irvine, CA
c. My resid d. My phor) I am a resident of or employed in the county where the Notic dence or business address is (specify): Two Park Plaza, Sume number is (specify): (949)852-8121 r penalty of perjury under the laws of the State of California the ry 19, 2010	uite 980, Irvine, CA 92614
Hilary Martin		
	PE OR PRINT NAME OF PERSON WHO SERVED)	(SIGNATURE OF PERSON WHO SERVED)
	PROOF OF SERVICE OF OBJECTION TO F (Code Civ. Proc., §§ 198) Personal Service of service I was at least 18 years of age and not a party to t	5.3,1985.6) Mail his legal action.
2. Iserved a c	(Code Civ. Proc., §§ 198 Personal Service of service I was at least 18 years of age and not a party to t copy of the <i>Objection to Production of Records</i> as follows (co. E REQUESTING PARTY Personal service. I personally delivered the <i>Objection to</i> (i) Name of person served:	5.3,1985.6) Mail his legal action. mplete either a or b): Production of Records as follows: (iii) Date served:
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	SUBP-010
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Richard E. Masson, Esq. SBN: 198331	FOR COURT USE ONLY
Masson & Fatini. LLP	
Two Park Plaza, Suite 980, Irvine, CA 92614	
TELEPHONE NO.: (949)852-8121 FAX NO. (Optional): (949)852-8118	
E-MAIL ADDRESS (Optional): RMasson@MassonFatini.com ATTORNEY FOR (Name): John Bob Smith	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE	
STREET ADDRESS: 341 The City Drive South	
MAILING ADDRESS: P. O. BOX 14171	
CITY AND ZIP CODE: Orange, 92863-1571	
BRANCH NAME: Lamoreaux Justice Center (LJC)	
PLAINTIFF/PETITIONER: JOHN BOB SMITH	
DEFENDANT/RESPONDENT: JANE DOE SMITH	
DEPOSITION SUBPOENA	CASE NUMBER:
FOR PRODUCTION OF BUSINESS RECORDS	09D123456
HE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone nur Custodian of Records of Bank of America telephone number: 1/800 000 Bank Road, Irvine, California 92614 1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3	0-555-1234
To (name of deposition officer): Friendly Attorney	
On (date) : March 16, 2010 At (time):	10:00 a.m.
Location (address): One Park Plaza, Suite 600, Irvine, CA 92614	
Do not release the requested records to the deposition officer prior to the	date and time stated above.
 wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and maddress in item 1. b. by delivering a true, legible, and durable copy of the business records described witness's address, on receipt of payment in cash or by check of the reasonable under Evidence Code section 1563(b). c. by making the original business records described in item 3 available for inspectationation of the produced by the date and time shown in item 1 (but not sooner the deposition subpoena, or 15 days after service, whichever date is later). Reasonable cost available or copying them, and postage, if any, are recoverable as set forth in Evidence accompanied by an affidavit of the custodian or other qualified witness pursuant to Evide. 3. The records to be produced are described as follows: X Continued on Attachment 3. 4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSIL CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUAS SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESS AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE COI 	d in item 3 to the deposition officer at the costs of preparing the copy, as determined ction at your business address by the er reasonable conditions during normal an 20 days after the issuance of the ts of locating records, making them Code section 1563(b). The records shall be ence Code section 1561.
DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING	COURT. YOU WILL ALSO BE LIABLE
Date issued: February 19, 2010	
Richard E. Masson, Esq. 📃 👘 🖡	
	NATURE OF PERSON ISSUING SUBPOENA)
	Det Origin
Attorney for John	
(Proof of service on reverse)	(TITLE) Page 1 of
orm Adopted for Mandatory Use DEPOSITION SUBPOENA FOR PRODUCTION Judicial Council of California UBP-010 [Rev. January 1, 2007] OF BUSINESS RECORDS	Code of Civil Procedure. §§ 2020.410–2020.444 Civil Code. § 15(a)(e Government Code § 68097. www.courtinfo.ca.gc

This request refers to:

Name: Jane Doe Smith Social Security no.: 123-45-6789 Date of Birth: 01/01/1950 Account Nos.: 1234-5678-9101-1121; 7894-5235-5896-6895; and 3652-4857-5698-5863.

- All records pertaining to any account or accounts of every kind and nature whatsoever in which Jane Doe Smith holds in her name or has an interest in, including, but not limited to, IRAs, 401(k) accounts, retirement accounts, Certificates of Deposit, Bonds, Debentures, annuities, money market accounts, mutual funds, equity accounts, savings accounts, checking accounts, lines of credit, etc., between January 1, 2008 to present date; and
- Copies of all financial statements or records containing financial information of any nature relating to or pertaining to Jane Doe Smith for the time period of January 1, 2008 to present date.

IRMO Smith Case No: 09D123456 Bank of America

This request refers to:

Name:	Jane Doe Smith
Social Security no .:	123-45-6789
Date of Birth:	01/01/1950

- Copies of any and all documents evidencing income received by Jane Doe Smith, including, but not limited to, Paychecks, Paystubs, Bonuses, Stock Options, Deferred Compensation, 401(k), Severance Pay, Etc., during the period of January 1, 2008 to present date;
- Copies of all Contracts or Agreements entered into between Jane Doe Smith, [Employer's Name], and/or any Subsidiary, Joint Venturer, Parent or Sister Corporation, Etc., during the period of January 1, 2008 to present date; and
- Copies of all Resumes or Curriculum Vitae's from Jane Doe Smith to [Employer's Name], during the period of January 1, 2008 to present date.

IRMO Smith Case No: 09D123456 [Employer's Name]



This request refers to:

Name:	Annie Smith
Social Security no .:	987-65-4321
Date of Birth:	01/01/2000

 Copies of any and all documents relating to, concerning or regarding the minor child, Annie Smith ("Annie"), including but not limited to teacher reports, registration, extra curricular activity enrollment, emails, attendance records, report cards, class schedules, anything in Annie's handwriting or anything signed by Annie, etc., during the period of January 1, 2009 to present date.

> IRMO Smith Case No: 09D123456 [School's Name]



SUBP-010

_ PLAINTIFF/PETITIONER: JOHN BOB SMITH	CASE NUMBER:
DEFENDANT/RESPONDENT: JANE DOE SMITH	09D123456
PROOF OF SERVICE OF DE	POSITION SUBPOENA FOR
PRODUCTION OF B	USINESS RECORDS
1. I served this Deposition Subpoena for Production of Business R as follows:	Records by personally delivering a copy to the person served
a. Person served (name): Custodian of Records of Bank of a	America
b. Address where served: 1000 Bank Road, Irvine, Californ	ia 92614
c. Date of delivery: March 1, 2010	
d. Time of delivery:	
e. (1) 🔀 Witness fees were paid.	
	5.00
(2) Copying fees were paid. Amount: \$	
f. Fee for service:	
2. I received this subpoena for service on <i>(date)</i> : March 1, 2010	
 c. Registered California process server. d. Employee or independent contractor of a registered California process server. e. Exempt from registration under Business and Professional Profession California process server. 	
 f. Registered professional photocopier. g. Exempt from registration under Business and Profession. h. Name, address, telephone number, and, if applicable, county Hilary Martin Two Park Plaza, Suite 980 Irvine, California 92614 Telephone No.: (949) 852-8121 	ons Code section 22451.
 g. Exempt from registration under Business and Professi h. Name, address, telephone number, and, if applicable, county Hilary Martin Two Park Plaza, Suite 980 Irvine, California 92614 	ons Code section 22451.
 g. Exempt from registration under Business and Profession. h. Name, address, telephone number, and, if applicable, county Hilary Martin Two Park Plaza, Suite 980 Irvine, California 92614 Telephone No.: (949) 852-8121 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:	ons Code section 22451. y of registration and number: (For California sheriff or marshal use only) I certify that the foregoing is true and correct. Date:
 g. Exempt from registration under Business and Profession. h. Name, address, telephone number, and, if applicable, county Hilary Martin Two Park Plaza, Suite 980 Irvine, California 92614 Telephone No.: (949) 852-8121 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	ons Code section 22451. y of registration and number: (For California sheriff or marshal use only) I certify that the foregoing is true and correct.
 g. Exempt from registration under Business and Profession. h. Name, address, telephone number, and, if applicable, county Hilary Martin Two Park Plaza, Suite 980 Irvine, California 92614 Telephone No.: (949) 852-8121 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date:	ons Code section 22451. y of registration and number: (For California sheriff or marshal use only) I certify that the foregoing is true and correct. Date: (SIGNATURE)



1	TO CUSTODIAN OF RECORDS OF BANK OF AMERICA:
2	I certify under penalty of perjury under the laws of the State of California that with
3	respect to the attached Subpoena, I have given to Respondent Jane Doe Smith the notice
4	required by Code of Civil Procedure, Section 1985.3
5	
6	Respectfully Submitted, MASSON & FATINI, LLP
7	
8	
9	DATED: January 6, 2010 By: SIGNATURE Richard E. Masson, Esg.
10	Attorney for Petitioner John Bob Smith
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	2
	Certificate of Compliance – Bank of America

Richard E. Masson * Susan M. Fatini Sanaz Farkhad

*LLM in Tax

JAMBOREE CENTER TWO PARK PLAZA, SUITE 980 IRVINE, CALIFORNIA 92614 www.massonfatini.com Writer's Direct: TEL 949.852.8121 FAX 949.852.8118 HMartin@MassonFatini.com

File No.: 12345

January 6, 2010

Via Personal Delivery

Custodian of Records Bank of America 1000 Bank Road Irvine, California 92614

> Re: IRMO Smith Case No.: 09D123456

Dear Sir or Madam:

Enclosed is a copy of a Deposition Subpoena for Production of Business Records. The requested documents pertain to Jane Doe Smith.

To comply with the Subpoena, please complete each of the following steps:

- Immediately telephone our office at the above number and let us know that you have received the subpoena and that you intend to comply with the requirements of this letter.
- Make one (1) set of photocopies of the records that are required, as set forth in the Subpoena.
- On your letterhead please prepare a statement which reads as follows:

"I am the duly authorized Custodian of Records of (name of company) and I have the authority to certify the records herein. The copies provided are true copies of he records described in the Subpoena. These records were prepared by the personnel of the business in the ordinary course of the business at or near the time of the act, condition or event.

The records to which this affidavit relates are (insert

<u>sson &</u> Fati	NI, LLP	Bank of America January 6, 2010 Page 2 of 3	
	description of records).		
	These records were prepared (insert mo preparation).	ide of	
	I declare under penalty of perjury under California that the forgoing is true and correct.		
	(type in name	of declarant)"	
4.	You are to date, sign and attach a copy of the record of the statement.	is to the copy	
5.	The copy of the statement and records are to be place sealed envelope and on this envelope you are to put information:		/
	IRMO Smith, Case # 09D123456 Petitioner: John Bob Smith Respondent: Jane Doe Smith Custodian of Records: Bank of America Deposition Officer: Friendly Attorney The Statement: "THIS ENVELOPE CONTA RECORDS PURSUANT TO SUBPOENA".	INS	
6.	Place the above envelope inside a larger envelope, s address it to:	seal it, and	
	Friendly Attorney Law Offices of Friendly Attorney One Park Plaza, Suite 600 Irvine, California 92614		
The records reque service of the subp	sted must be mailed out by you within fifteen (15) days oena.	s following	
costs. If the costs	a check in the amount of \$15.00 to cover the anticipat are more then the \$15.00, please forward an invoice w the Deposition Officer.		

MASSON

Bank of America January 6, 2010 Page 3 of 3

If you have any difficulties in complying with or following the instructions, please call me at the above telephone number. Your anticipated courtesy and cooperation in this matter are greatly appreciated.

Sincerely,

SIGNATURE

Hilary Martin, Paralegal Masson & Fatini, LLP

HM:moh Encl(s).



Civil Subpoena

This is the process for a civil subpoena:

- 1. Notice to Consumer or Employee and Objection
- Civil Subpoena (Duces Tecum) for personal appearance and production of documents and things at trial or hearing and declaration
- Attachment 2
- Certificate of Compliance
- 5. Letter to the company that we are Subpoenaing
- Check for \$15.00

The Notice to Consumer and Civil Subpoena must be served on the opposing party/counsel. (5 days + 5 for mail) Calendar this date.

If the opposing party does not object then we have to personally serve the Notice to Consumer, Civil Subpoena, Certificate of Compliance, letter to the company and a \$15.00 check on the place we are Subpoenaing.

Make sure you get or fill out the Proof of Service (the last page of the Civil Subpoena).

	SUBP-02
ATTORNEY OF PARTY WITHOUT ATTORNEY (Name, State Namedot, and address): Richard E., Masson, Esq. SBN: 198331 Masson & Fatini, LLP Two Park Plaza, Suite 980 Irvine, CA 92614 TELEPHONE NO: (949)852-8121 FAX NO. (Contora): (949)852-8118 E-MAIL ADRESS (Orderat): RMasson@MassonFatini.com ATTORNEY FOR (Name): John Bob Smith	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 341 The City Drive South MALING ADDRESS: P. O. Box 14171 CITY AND ZIP CODE: Orange, 92863-1571 BRANCH NAME: Lamoreaux Justice Center (LJC)	
PLAINTIFF/ PETITIONER: JOHN BOB SMITH	CASE NUMBER:
DEFENDANT/ RESPONDENT: JANE DOE SMITH	09D123456
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3,1985.6)	
NOTICE TO CONSUMER OR EMPLOYEE	

- TO (name): Jane Doe Smith
- 1. PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): John Bob Smith

SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify date): March 26, 2010 The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought): Custodian of Records of Bank of America 1000 Bank Road, Irvine, California 92614

A copy of the subpoena is attached.

- IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED. IN ITEM a. OR b. BELOW:
 - a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the witness and the deposition officer named in the subpoena at least five days before the date set for production of the records.
 - b. If you are not a party to this action, you must serve on the requesting party and on the witness, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.
- YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date: February 19, 2010

Richard E. Masson, Esq. (TYPE OF PRINT NAME)		TTORNEY
OBJECTION BY NON-PARTY	TO PRODUCTION OF RECORDS	
I object to the production of all of my records specified in the I object only to the production of the following specified records		
3. The specific grounds for my objection are as follows:		
Date:		
	•	
(TYPE OR PRINT NAME)	(SIGNATURE)	
Free Adventides Mandators (1):	EMPLOYEE AND OBJECTION ProDoc ^{® Code}	Page 1 of 2 of Civil Procedure, §§ 1985.3, 1965.6, 2020.010-2020.510 www.courtinfo.ca.gov



		SUBP-025
PLAINTIFF/F	PETITIONER: JOHN BOB SMITH	CASE NUMBER:
EFENDANT/RE	ESPONDENT: JANE DOE SMITH	09D123456
	PROOF OF SERVICE OF NOTICE TO CONSUMER OR E (Code Civ. Proc., §§ 1985.3,19	35.6)
	Personal Service	
	service I was at least 18 years of age and not a party to this any of the Motion to Consumer or Employee and Objection as I	
	py of the Notice to Consumer or Employee and Objection as t sonal service. I personally delivered the Notice to Consume.	
	Name of person served:	(3) Date served:
	Address where served:	(4) Time served:
	 I deposited the Notice to Consumer or Employee and Object postage fully prepaid. The envelope was addressed as follow 	
	Name of person served: Jane Doe Smith	 (3) Date of mailing: February 19, 2010
	Address: 9876 Cherry Lane	 (4) Place of mailing (city and state):
()	Costa Mesa, California 90033	Irvine, CA
 c. My resider d. My phone 	am a resident of or employed in the county where the Notice nee or business address is (specify): Two Park Plaza, Suite number is (specify): (949)852-8121 enalty of perjury under the laws of the State of California that 19, 2010	980, Irvine, CA 92614
	10, 2010	
Hilary Martin	OR PRINT NAME OF PERISON WHO SERVED	(SIGNATURE OF PERSON WHO SERVED)
	PROOF OF SERVICE OF OBJECTION TO PR	
	(Code Civ. Proc., §§ 1985.3	Mail
I served a cop	service I was at least 18 years of age and not a party to this by of the <i>Objection to Production of Records</i> as follows (comp REQUESTING PARTY Personal service. I personally delivered the <i>Objection to P</i> (i) Name of person served: (ii) Address where served:	lete either a or b):
(2)	Mail. I deposited the Objection to Production of Records in	
	postage fully prepaid. The envelope was addressed as follo (i) Name of person served:	(iii) Date of mailing:
	(ii) Address:	(iii) Date of mailing. (iv) Place of mailing (city and state):
b. ON THE V	(v) I am a resident of or employed in the county where the	Objection to Production of Records was mailed.
(1)	Personal service. I personally delivered the Objection to P	roduction of Records as follows:
	(i) Name of person served:	(iii) Date served:
	(ii) Address where served:	(iv) Time served:
(2)	Mail. I deposited the Objection to Production of Records in postage fully prepaid. The envelope was addressed as follo	
	Name of person served:	(iii) Date of mailing:
	(ii) Address:	(iv) Place of mailing (city and state):
,	 (v) I am a resident of or employed in the county where the (or business address is (specify): mber is (specify); 	Objection to Production of Records was mailed.
	enalty of perjury under the laws of the State of California that	the foregoing is true and correct.
(TYPE C	OR PRINT NAME OF PERSON WHO SERVED)	(SIGNATURE OF PERSON WHO SERVED)

	SUBP-002
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Aumber, and address): Richard E. Masson, Esq. SBN: 198331 —Masson & Fatini, LLP	FOR COURT USE ONLY
Two Park Plaza, Suite 980	
Irvine. CA 92614 e-mail: RMasson@MassonFatini.com	
TELEPHONE NO: (949)852-8121 FAX NO: (949)852-8118	
ATTORNEY FOR (Name): John Bob Smith	
NAME OF COURT: Superior Court of California, County of Orange	1
STREET ADDRESS: 341 The City Drive South	
MAULING ADDRESS P. O. Box 14171	
CITY AND ZIP CODE: Orange, 92863-1571	
BRANCH NAME Lamoreaux Justice Center (LJC)	
PLAINTIFF/ PETITIONER: JOHN BOB SMITH	7
DEFENDANT/ RESPONDENT: JANE DOE SMITH	
CIVIL SUBPOENA (DUCES TECUM) for Personal Appearance	CASE NUMBER:
and Production of Documents and Things at Trial or Hearing AND DECLARATION	09D123456
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone i	umber of witness, if known):
	e no.: 1/800-555-1234
1000 Bank Road, Irvine, California 92614	
1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time,	and place shown in the box below
UNLESS your appearance is excused as indicated in box 3b below or you make item 4 below.	an agreement with the person named in
a. Date: March 26, 2010 Time: 8:30 a.m. X Dept.: L-60	Div.: Room:
b. Address: 341 The City Drive South, Orange, 92863-1571	
 IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CON UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTIO BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, M EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO 	TO QUASH OR AN OBJECTION HAS VITNESSES, AND CONSUMER OR
UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTIO BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, M EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO RECORDS.	TO QUASH OR AN OBJECTION HAS VITNESSES, AND CONSUMER OR
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PLAINTIFF/PETITIONER: JOHN BOB SMITH CASE NUMBER: DEFENDANT/RESPONDENT: JANE DOE SMITH 09D123456 The production of the documents or the other things sought by the subpoena on page one is supported by (check ane): is supported by (check ane): Image: the attached affidavit or declaration Image: the following declaration: DECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING (Code Civ. Proc., §§ 1985,1987.5)	
The production of the documents or the other things sought by the subpoena on page one is supported by (check one): the attached affidavit or declaration ECLARATION IN SUPPORT OF CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING	
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APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING	
I, the undersigned, declare I am the plaintiff defendant petitioner respondent Storney for (specify): John Bob Smith other (specify): in the above-entitled action.	
 The witness has possession or control of the following documents or other things and shall produce them at the time and place specified in the Civil Subpoena for Personal Appearance and Production of Documents and Things at Trial or Hearing on page on of this form (specify the exact documents or other things to be produced): 	
 X Continued on Attachment 2. Good cause exists for the production of the documents or other things described in paragraph 2 for the following reasons: These documents are materially relevant in that they are directly related to the spousal support, child support and attorney fees issues which are presently pending before the court in this action. 	
 Continued on Attachment 3. These documents or other things described in paragraph 2 are material to the issues involved in this case for the following reasons These documents are materially relevant in that they are directly related to the spousal support, child support and attorney fees issues which are presently pending before the court in this action. 	x/
Continued on Attachment 4. declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Date: February 19, 2010	
Richard E. Masson, Esq.	
Request for Accommodations	
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the date on which you are to appear. Contact the clerk's office or go to www.courtinfo.ca.gow/forms for Request for Accommodations by Persons With Disabilities and Response (form MC-410). (Civil Code, § 54.8.)	
(Proof of service on page 3)	
SUBP-002 Rev. July 1, 2008) CIVIL SUBPOENA (DUCES TECUM) FOR PERSONAL APPEARANCE Pege 2 of AND PRODUCTION OF DOCUMENTS AND THINGS AT TRIAL OR HEARING AND DECLARATION	3

This request refers to:

Name:	Jane Doe Smith
Social Security no .:	123-45-6789
Date of Birth:	01/01/1950
Account Nos.:	1234-5678-9101-1121;
	7894-5235-5896-6895; and
	3652-4857-5698-5863.

- All records pertaining to any account or accounts of every kind and nature whatsoever in which Jane Doe Smith holds in her name or has an interest in, including, but not limited to, IRAs, 401(k) accounts, retirement accounts, Certificates of Deposit, Bonds, Debentures, annuities, money market accounts, mutual funds, equity accounts, savings accounts, checking accounts, lines of credit, etc., between January 1, 2008 to present date; and
- Copies of all financial statements or records containing financial information of any nature relating to or pertaining to Jane Doe Smith for the time period of January 1, 2008 to present date.

IRMO Smith Case No: 09D123456 Bank of America

This request refers to:

Name:	Jane Doe Smith
Social Security no .:	123-45-6789
Date of Birth:	01/01/1950

- Copies of any and all documents evidencing income received by Jane Doe Smith, including, but not limited to, Paychecks, Paystubs, Bonuses, Stock Options, Deferred Compensation, 401(k), Severance Pay, Etc., during the period of January 1, 2008 to present date;
- Copies of all Contracts or Agreements entered into between Jane Doe Smith, [Employer's Name], and/or any Subsidiary, Joint Venturer, Parent or Sister Corporation, Etc., during the period of January 1, 2008 to present date; and
- Copies of all Resumes or Curriculum Vitae's from Jane Doe Smith to [Employer's Name], during the period of January 1, 2008 to present date.

IRMO Smith Case No: 09D123456 [Employer's Name]

This request refers to:

Name:	Annie Smith
Social Security no .:	987-65-4321
Date of Birth:	01/01/2000

 Copies of any and all documents relating to, concerning or regarding the minor child, Annie Smith ("Annie"), including but not limited to teacher reports, registration, extra curricular activity enrollment, emails, attendance records, report cards, class schedules, anything in Annie's handwriting or anything signed by Annie, etc., during the period of January 1, 2009 to present date.

> IRMO Smith Case No: 09D123456 [School's Name]

Certificate of Compliance - Bank of America		27 28	26	25		26	COUNTY OF ORANGE, LAMO In the Matter of:	OREAUX JUSTICE CENTER CASE NO. 09D123456 CERTIFICATE OF COMPLIANCE	
26 27	26 27		25		A Limited Limbitity Partnership Richard E. Masson, Esq., State Bar No. 198331 Susan M. Fatini, State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Fak: (949) 852-8118 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith Superior Of Orange, Lamoreaux JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Hettioner Jane Doe Smith Hespondent. Jane Doe Smith Jane Doe Smith	24			
25 26 27	25 26 27	25		24	2 A Limited Lability Partnership 3 Susan M. Fatini, State Bar No. 198331 3 Susan M. Fatini, State Bar No. 198031 3 Susar M. Fatini, State Bar No. 246305 4 Two Park Plaza, Suite 980 1 Irvine, California 92614 5 Telephone: (949) 852-8112 6 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 11 In the Matter of: CASE NO. 09D123456 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Jane Doe Smith 17 Respondent. 18	23			
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 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of:	 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of:	6 E-Mail: masson@masson@tatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Jane Doe Smith 17 Respondent. 18	6 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Respondent. 17 Respondent. 18	6 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Respondent. 17 Respondent. 18	 A Limited Liability Partnership Richard E. Masson, Esq., State Bar No. 198331 Susan M. Fatini, State Bar No. 199060 Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 	5	Telephone: (949) 852-8121		
 Telephone: (949) 852-81121 Fax: (949) 852-8113 E-Mai: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Hand Hand<td> Telephone: (949) 852-81121 Fax: (949) 852-8113 E-Mai: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Hand Hand<td>5 Telephone: (949) 852-8121 Fax: (949) 852-8118 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Respondent. 17 Respondent. 18 </td><th> ⁵ Telephone: (949) 852-8121 Fex: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Iane Doe Smith Respondent. Respondent. Respondent. </th><td> ⁵ Telephone: (949) 852-8121 Fax: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. In the Matter of the spondent. In the spondent of the spondent. In the</td><td>A Limited Liability Partnership Richard E. Masson, Esg., State Bar No. 198331</td><td>4</td><td>Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980</td><td></td><td></td></td>	 Telephone: (949) 852-81121 Fax: (949) 852-8113 E-Mai: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Hand Hand<td>5 Telephone: (949) 852-8121 Fax: (949) 852-8118 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Respondent. 17 Respondent. 18 </td><th> ⁵ Telephone: (949) 852-8121 Fex: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Iane Doe Smith Respondent. Respondent. Respondent. </th><td> ⁵ Telephone: (949) 852-8121 Fax: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. In the Matter of the spondent. In the spondent of the spondent. In the</td><td>A Limited Liability Partnership Richard E. Masson, Esg., State Bar No. 198331</td><td>4</td><td>Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980</td><td></td><td></td>	5 Telephone: (949) 852-8121 Fax: (949) 852-8118 E-Mail: masson@massonfatini.com 7 Attorneys for Petitioner John Bob Smith 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER 10 In the Matter of: 11 In the Matter of: 12 John Bob Smith 13 Petitioner 14 and 15 Jane Doe Smith 16 Respondent. 17 Respondent. 18	 ⁵ Telephone: (949) 852-8121 Fex: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Iane Doe Smith Respondent. Respondent. Respondent. 	 ⁵ Telephone: (949) 852-8121 Fax: (949) 852-813 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. In the Matter of the spondent. In the spondent of the spondent. In the	A Limited Liability Partnership Richard E. Masson, Esg., State Bar No. 198331	4	Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980		
 Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Pizaz, Suite 980 Irvine, California 92014 Telephone: (949) 852-9118 E-Mai: rmassonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith Petitioner and Jane Doe Smith Respondent. Sanaz Farkhad, Esq. State Bar No. 246305 In the Matter of: In th	 Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Pizaz, Suite 980 Irvine, California 92014 Telephone: (949) 852-9118 E-Mai: rmassonfatini.com Attorneys for Petitioner John Bob Smith SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith Petitioner and Jane Doe Smith Respondent. Sanaz Farkhad, Esq. State Bar No. 246305 In the Matter of: In th	Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (949) 852-8118 E-Mai: massonatini.com Attorneys for Petitioner John Bob Smith B John Bob Smith In the Matter of: John Bob Smith Petitioner John Bob Smith B John Bob Smith Case NO. 09D123456 John Bob Smith B Petitioner Jane Doe Smith B Jane Doe Smith B Jane Doe Smith Jane Doe Smith <th>Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (490) 852-8121 Fax: (949) 852-8112 Fax: (949) 852-8113 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Jane Joe Smith</th> <td>Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (490) 852-8121 Fax: (949) 852-8121 COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Bane Doe Smith Jane Doe Smith <td< td=""><td></td><td></td><td>Richard E. Masson, Esq., State Bar No. 198331</td><td></td><td></td></td<></td>	Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (490) 852-8121 Fax: (949) 852-8112 Fax: (949) 852-8113 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Jane Joe Smith	Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (490) 852-8121 Fax: (949) 852-8121 COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Bane Doe Smith Jane Doe Smith <td< td=""><td></td><td></td><td>Richard E. Masson, Esq., State Bar No. 198331</td><td></td><td></td></td<>			Richard E. Masson, Esq., State Bar No. 198331		
Richard E. Masson, Esc., State Bar No. 199331 Susan M. Fatin, State Bar No. 246305 Two Park Plaza, State Bar No. 246305 Attorneys for Petitioner John Bob Smith Bernard E. Mail: Imageon@massonfalini.com Attorneys for Petitioner John Bob Smith Bernard E. Mail: Imageon@massonfalini.com Country of ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Image: State Bar No. 199301 Jane Doe Smith Image: State Bar No. 199301 Image: State Bar No. 199302 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 I	Richard E. Masson, Esc., State Bar No. 199331 Susan M. Fatin, State Bar No. 246305 Two Park Plaza, State Bar No. 246305 Attorneys for Petitioner John Bob Smith Bernard E. Mail: Imageon@massonfalini.com Attorneys for Petitioner John Bob Smith Bernard E. Mail: Imageon@massonfalini.com Country of ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Image: State Bar No. 199301 Jane Doe Smith Image: State Bar No. 199301 Image: State Bar No. 199302 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199303 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 Image: State Bar No. 199304 I	Richard E. Masson, Esq. State Bar No. 198331 Susan M. Fatin, State Bar No. 199060 Sanaz Farkhad, Esq. State Bar No. 246305 Two Park Plaza, State Bar No. 246305 Fax: (949) 852-8118 E-Mait: masson/Batini.com Attorneys for Petitioner John Bob Smith Superstructure of: John Bob Smith Petitioner and Jane Doe Smith Jane Doe Smith Jane Doe Smith Jane Joe Smith J	Richard E. Masson, Esq., State Bar No. 198331 Susan M. Fatin, State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (949) 852-81121 Fax: (949) 852-8113 E-Mai: massonfatini.com Attorneys for Petitioner John Bob Smith Superior Court of The STATE OF CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and Jane Doe Smith Respondent. Jane Doe Smith	Richard E. Masson, Esq. State Bar No. 199060 Sunaar K. Fatin, State Bar No. 246305 Two Park Plaza, Suite 987. Telephone: (494) 852-8121 Fax: (949) 852-8118 Fax: (949) 852-8116 Superiod Counce of Counce					
A Lawled Lawled Promovely Rechard E. Masson, Esg., State Bar No. 198031 Susan M. Fathin, State Bar No. 199060 Sanaz Farkhad, Exg., State Bar No. 246306 Two Park Plaza, Suile 50 Two Park Plaza, Suile 50 Trolephone: (949) 852-8118 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith Superior of the state of countr of the state of California COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Petitioner Jane Doe Smith Respondent. Respondent. State Bar No. Park Plaza Sub State Bar No. Certificate of Compliance Mark State Bar No. Certificate of Compliance	A Lawled Lawled Promovely Rechard E. Masson, Esg., State Bar No. 198031 Susan M. Fathin, State Bar No. 199060 Sanaz Farkhad, Exg., State Bar No. 246306 Two Park Plaza, Suile 50 Two Park Plaza, Suile 50 Trolephone: (949) 852-8118 E-Mail: masson@massonfatini.com Attorneys for Petitioner John Bob Smith Superior of the state of countr of the state of California COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Petitioner Jane Doe Smith Respondent. Respondent. State Bar No. Park Plaza Sub State Bar No. Certificate of Compliance Mark State Bar No. Certificate of Compliance	A Limited Lability Partnership Richard E. Massion, Esg., State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Two Park Plaza, Suite 980 Irvine, California 92614 Fex: (49) 852-9113 Country of orange, Lamoreaux JUSTICE CENTER In the Matter of: CASE NO. 09D123456 John Bob Smith CERTIFICATE OF COMPLIANCE and Image: Petitioner Jane Doe Smith Image: Petitioner	A Limited Lability Partnership Richard E. Masson, Esg., State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Susan M. Fatini, State Bar No. 198331 Two Park Plaza, Suite 980 Irvine, California 92614 Telephone: (949) 852-8121 Prev: (949) 852-103 E-Mail: masson/filmer John Bob Smith Berner Structure In the Matter of: In the Matter of: CASE NO. 09D123456 John Bob Smith Berner Structure In the Matter of: John Bob Smith Berner Structure In the Matter of: John Bob Smith Berner Structure In the Matter of: John Bob Smith Barne Doe Smith <t< th=""><td>A Limited Labelity Partnership Richard E. Masson, Esq., State Bar No. 198331 Susan M. Fatini, State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California Scilt4 Telephone: (949) 852-8118 E-Mail: rmasson@rmassonfatini.com Attorneys for Petitioner John Bob Smith Supersion Court of The STATE of CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and John Bob Smith Reinder of: John Bob Smith Respondent. Respondent.</td><td></td><td></td><td></td><td></td><td></td></t<>	A Limited Labelity Partnership Richard E. Masson, Esq., State Bar No. 198331 Susan M. Fatini, State Bar No. 246305 Two Park Plaza, Suite 980 Irvine, California Scilt4 Telephone: (949) 852-8118 E-Mail: rmasson@rmassonfatini.com Attorneys for Petitioner John Bob Smith Supersion Court of The STATE of CALIFORNIA COUNTY OF ORANGE, LAMOREAUX JUSTICE CENTER In the Matter of: John Bob Smith Petitioner and John Bob Smith Reinder of: John Bob Smith Respondent. Respondent.					

1	TO CUSTODIAN OF RECORDS OF BANK OF AMERICA:
2	I certify under penalty of perjury under the laws of the State of California that with
3	respect to the attached Subpoena, I have given to Respondent Jane Doe Smith the notice
4	required by Code of Civil Procedure, Section 1985.3
5	
6	Respectfully Submitted, MASSON & FATINI, LLP
7	hindbort & Frind, EE
8	
9	DATED: January 6, 2010 By: SIGNATURE Richard E. Masson, Esq.
10	Attorney for Petitioner John Bob Smith
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	2 Certificate of Compliance – Bank of America
	Cernneate of Compliance – Bank of America

Richard E. Masson * Susan M. Fatini Sanaz Farkhad

*LLM in Tax

JAMBOREE CENTER TWO PARK PLAZA, SUITE 980 IRVINE, CALIFORNIA 92614 www.massonfatini.com Writer's Direct: TEL 949.852.8121 FAX 949.852.8118 HMartin@MassonFatini.com

File No.: 12345

January 6, 2010

Via Personal Delivery

Custodian of Records Bank of America 1000 Bank Road Irvine, California 92614

> Re: IRMO Smith Case No.: 09D123456

Dear Sir or Madam:

Enclosed is a copy of a Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration. The requested documents pertain to Jane Doe Smith.

To comply with the Subpoena, please complete each of the following steps:

- Immediately telephone our office at the above number and let us know that you intend to handle the matter by mail and comply with the requirements of this letter.
- Make one (1) set of photocopies of the records that are required, as set forth on the Application for Subpoena Duces Tecum.
- On your letterhead please prepare a statement which reads as follows:

"I am the duly authorized Custodian of Records of (name of company) and I have the authority to certify the records herein. The copies provided are true copies of he records described in the Subpoena. These records were prepared by the personnel of the business in the ordinary course of the business at or near the time of the act, condition or event.



Bank of America January 6, 2010 Page 2 of 3

The records to which this affidavit relates are (insert description of records).

These records were prepared (insert mode of preparation).

I declare under penalty of perjury under the State of California that the forgoing is true and correct.

(type in name of declarant)"

- You are to date and sign the copy of the statement and attach a copy of the records to the statement.
- The copy of the statement and records are to be placed inside a sealed envelope and on this envelope you are to put the following information:

IRMO Smith, Case # 09D123456

Petitioner: John Bob Smith Respondent: Jane Doe Smith Custodian of Records: Bank of America Court: Lamoreaux Justice Center Hearing Date: March 26, 2010 Hearing Time: 8:30 a.m. Department: L-60 The Statement: "THIS ENVELOPE CONTAINS RECORDS PURSUANT TO SUBPOENA".

 Place the above envelope inside a larger envelope, seal it, and address it to:

> Clerk of the Superior Court Superior Court of California County of Orange Lamoreaux Justice Center 341 The City Drive Orange, California 92863-1571

The records requested must be mailed out by you within fifteen (15) days following service of the subpoena. However, if the records cannot be mailed at least five (5) days *prior* to the scheduled hearing, the personal appearance of the custodian of records will be required.



Bank of America January 6, 2010 Page 3 of 3

- 7. You must contact the clerk of the superior court in the department in which the hearing is scheduled the day prior to the scheduled hearing date and confirm that the records have been received and are in the file of the court. If the Clerk does not confirm that the records have been received and are in the file, a personal appearance with the records will be required on the date of the hearing.
- Telephone our office the day before the hearing to determine whether or not personal appearance is necessary as a result of other factors accruing in the case.

We have enclosed a check in the amount of \$15.00 to cover the anticipated copying costs. If the costs are more then the \$15.00, please forward an invoice with our copies of the documents.

If you have any difficulties in complying with or following the instructions, please call me at the above telephone number. Your anticipated courtesy and cooperation in this matter are greatly appreciated.

Sincerely,

SIGNATURE

Hilary Martin, Paralegal MASSON & FATINI, LLP



HM:moh Encl(s).

Richard E. Masson * Susan M. Fatini Sanaz Farkhad

*LLM in Tax

JAMBOREE CENTER TWO PARK PLAZA, SUITE 980 IRVINE, CALIFORNIA 92614 www.massonfatini.com Writer's Direct: TEL 949.852.8121 FAX 949.852.8118 HMartin@MassonFatini.com

File No.: 12345

January 6, 2010

Via Personal Delivery

Custodian of Records Bank of America 1000 Bank Road Irvine, California 92614

> Re: IRMO Smith Case No.: 09D123456

Dear Sir or Madam:

Enclosed is a copy of a Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration. The requested documents pertain to Jane Doe Smith.

To comply with the Subpoena, please complete each of the following steps:

- Immediately telephone our office at the above number and let us know that you intend to handle the matter by mail and comply with the requirements of this letter.
- Make two (2) sets of photocopies of the records that are required, as set forth on the Application for Subpoena Duces Tecum.
- On your letterhead please prepare a statement which reads as follows:

"I am the duly authorized Custodian of Records of (name of company) and I have the authority to certify the records herein. The copies provided are true copies of he records described in the Subpoena. These records were prepared by the personnel of the business in the ordinary course of the business at or near the time of the act, condition or event.



Bank of America January 6, 2010 Page 2 of 3

The records to which this affidavit relates are (insert description of records).

These records were prepared (insert mode of preparation).

I declare under penalty of perjury under the State of California that the forgoing is true and correct.

(type in name of declarant)"

- You are to date and sign the copy of the statement and attach a copy of the records to the statement.
- One copy of the statement and records is to be mailed to this office at the above address.
- The copy of the statement and records are to be placed inside a sealed envelope and on this envelope you are to put the following information:

IRMO Smith, Case # 09D123456

Petitioner: John Bob Smith Respondent: Jane Doe Smith Custodian of Records: Bank of America Court: Lamoreaux Justice Center Hearing Date: March 26, 2010 Hearing Time: 8:30 a.m. Department: L-60 The Statement: "THIS ENVELOPE CONTAINS RECORDS PURSUANT TO SUBPOENA".

Place the above envelope inside a larger envelope, seal it, and address it to:

> Clerk of the Superior Court Superior Court of California County of Orange Lamoreaux Justice Center 341 The City Drive Orange, California 92863-1571



Bank of America January 6, 2010 Page 3 of 3

If you have any difficulties in complying with or following the instructions, please call me at the above telephone number. Your anticipated courtesy and cooperation in this matter are greatly appreciated.

Sincerely,

SIGNATURE

Hilary Martin, Paralegal Masson & Fatini, LLP

HM:moh Encl(s).



1			
,	I Officer of		
1	Law Offices of MASSON & FATINI, LLP		
2	A Limited Liability Partnership Richard E. Masson, Esq., State Bar No. 198331		
3	Two Park Plaza, Suite 980		
4	Irvine, California 92614 Telephone: (949) 852-8121		
5	Facsimile: (949) 852-8118 E-Mail: <u>RMasson@MassonFatini.com</u>		
6	Attorneys for Petitioner JOHN BOB SMITH		
7			
8	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA	
9	COUNTY OF ORANGE, LAN	MOREAUX JUSTICE CENTER	
10			
11	In re Marriage of:	CASE NO. 09D123456	
12	JOHN BOB SMITH,	Assigned for all purposes to: Honorable	
13) Soandso, Judge, Dept. L-79	
14	and Petitioner) NOTICE IN LIEU OF SUBPOENA TO COMPEL ATTENDANCE OF PARTY BEFORE COURT, TO BRING DOCUMENTS, AND THAT		
15			
16	JANE DOE SMITH,	SECONDARY EVIDENCE WILL BE	
17	Respondent.	Date: February 19, 2010	
18) Time: 9:00 a.m.) Dept.: L-79		
19			
20			
21	PLEASE TAKE NOTICE that pursuant	nt to Code of Civil Procedure section 1987, the	
22	Respondent JANE DOE SMITH ("Respondent"), shall appear on February 19, 2010, at 9:00	
23	a.m., in Department L-79 of the Lamoreaux Jus	tice Center located at 341 The City Drive,	
24	Orange, California, or any date to which the case	se is continued.	
25	PLEASE TAKE FURTHER NOTICI	that pursuant to Code of Civil Procedure	
26	section 1987, subsections (b) and (c), Petitioner JOHN BOB SMITH requests Respondent bring		
27	with her the documents set forth in Exhibit "A", in her possession, custody or control.		
28	Respondent is further advised that in the event of noncompliance with this Notice, the parties		
		TENDANCE OF PARTY BEFORE COURT, TO BRING RY EVIDENCE WILL BE INTRODUCED	







previously, or which may be in the future paid available, accepted, rejected, credited, offered for 1 any purpose by any individual agency, department, company or otherwise, to which YOU are, 2 were, or may become entitled to for the period of January 1, 2009 to the present date. - 3 REQUEST NO. 7: 4 All WRITINGS of all monies paid for YOU or on YOUR behalf by any person, 5 organizations or entity, whether corporate or otherwise, for the period of January 1, 2009 to the 6 7 present date. **REQUEST NO. 8:** 8 All books and WRITINGS showing any fringe benefits available to YOU from any 9 business entity in which YOU are employed or in which YOU have a legal or equitable ownership 10 11 interest, including, but not limited to, auto expenses, travel expenses, personal living and entertainment expenses, life insurance, bonuses, health, accident and hospital insurance, for the 12 period of January 1, 2009 to the present date. 13 14 REQUEST NO. 9: All WRITINGS of all savings accounts, treasury bills, certificates of deposit accounts, 15 money market accounts, credit union accounts or other accounts of YOURS, including those held 16 by YOU, in YOUR name or as trustee for any other person whether or not the account or accounts 17 18 have been closed. This would include any such accounts in YOUR name, as custodian for any 19 minor under the Uniform Gift to Minors Act for the period of January 1, 2009 to the present date. REQUEST NO. 10: 20 All bank books, bank statements, cancelled checks, check registers and other documents of 2122 every kind relating to accounts with any bank, savings and loan association, or other depository, standing in YOUR name, alone or jointly with any other person, firm or corporation, or in which 23 YOU have the right to make withdrawals or write checks for the period of January 1, 2009 to the 24 25 present date. 1111 26 1111 27 28 1111 EXHIBIT "A'
REQUEST NO. 11: 1 2 All WRITINGS pertaining to any account or accounts of every kind and nature whatsoever in which YOU have deposited or withdrawn funds or incurred debits or credits for 3 period of January 1, 2009 to the present date. 4 **REQUEST NO. 12:** 5 Any and all WRITINGS showing or tending to show the balance as of the date YOU 6 allege to be the date of separation from YOUR spouse in any bank accounts standing in the 7 name of YOU and/or YOUR spouse or on which YOU and/or YOUR spouse had the right to 8 write checks or withdraw funds. 9 REQUEST NO. 13: 10 11 Copies of any and all personal financial statements prepared by YOU or an accountant, or any other person for YOU for the period of January 1, 2009 to the present date. 12 REQUEST NO. 14: 13 14 Copies of all loan applications and/or credit applications prepared by YOU, or for YOUR benefit for the period of January 1, 2009 to the present date. 15 REQUEST NO. 15: 16 Copies of all financial statements or WRITINGS containing financial information of any 17 18 nature which have been submitted by YOU to banks or lending institutions or to any person or entities in connection with YOUR application for credit for the period of January 1, 2009 to the 19 present date. 20 **REQUEST NO. 16:** 2122 Each financial statement or other summary of net worth, by whatever term designated, prepared by YOU, or for YOUR benefit at any time since January 1, 2009 to the present date. 23 REQUEST NO. 17: 24 25 All WRITINGS pertaining to any and all real estate in which YOU have acquired or may have acquired an interest during the period of January 1, 2009 to the present date, including 26 any leases or mortgages related thereto, monthly payments and present outstanding balance of 27 28 principal and interest, together with any evidence showing all contributions in cash or otherwise EXHIBIT "A"

made by YOU to the acquisition of such real estate, including but not limited to the down 1 2 payment. REQUEST NO. 18: 3 All documents of title and/or deeds to real property standing in YOUR name alone or 4 jointly with any other person, firm or corporation during the period of January 1, 2009 to the 5 present date. 6 REQUEST NO. 19: 7 Any and all WRITINGS relating to any interest YOU may have in real estate, whether as 8 owner, co-owner, fiduciary, trust beneficiary (vested or contingent), partner, limited partner, 9 shareholder, joint venture, mortgagee, developer, manager or otherwise, for the period of 10 11 January 1, 2009 to the present date. REQUEST NO. 20: 12 All WRITINGS reflecting each parcel of real property sold or exchanged or otherwise 13 transferred by or for YOU or for YOUR benefit at any time for the period of January 1, 2009 to 14 the present date. 15 **REQUEST NO. 21:** 16 All WRITINGS pertaining to real estate in which YOU have acquired or may have 17 18 acquired an interest including any leases or mortgages related thereto (including monthly 19 payment and present outstanding balance of principal and interest) together with any evidence showing all contributions of each or otherwise made by YOU to the acquisition of such real 20estate from period of January 1, 2009 to the present date. 2122 REQUEST NO. 22: Copies of all sales agreements, escrow documents and/or settlement statements and/or 23 options for any real estate purchased, sold or owned by YOU and those held by YOU in YOUR 24 25 name, or YOUR name jointly with any other person or in YOUR name in trust or in YOUR name as guardian for any other person for the period of January 1, 2009 to the present date. 26 27 28 1111 EXHIBIT "A'

REQUEST NO. 23:

1

	Copies of any and all partnership agreements for any partnership in which YOU hold or
3	have held an interest for the period of January 1, 2009 to the present date.
4	REQUEST NO. 24:
	Complete listing of all partnership interests and copies of Federal and State tax returns,
6	including schedule K-1's for any and all partnerships for the period of January 1, 2009 to the

present date, in which YOU hold an interest or have held an interest. 7

REQUEST NO. 25: 8

All WRITINGS indicating all interests of any kind held by YOU in any and all 9

corporations (foreign and domestic) or any other business entities for the period of January 1, 10

11 2009 to the present date.

REQUEST NO. 26: 12

Copies of all corporate WRITINGS including but not limited to articles of incorporation, 13

14 by-laws, and minute books for every corporation in which YOU have held a legal or equitable

ownership interest for the period of January 1, 2009 to the present date. 15

REQUEST NO. 27: 16

The general ledgers, cash receipts journals, cash disbursements journals, sales journals, 17 purchase registers and journals for the period of January 1, 2009 to the present date for any and 18 all partnerships, corporations or entities in which YOU hold or have held an interest. 19

REQUEST NO. 28: 20

Copies of all financial statements, balance sheets, and income statements with respect to 21any and all proprietorships, joint ventures, partnerships, realty trusts, corporations or other legal 22 entities in which YOU hold or have held a legal or equitable ownership interest, individually or 23 otherwise, for the period of January 1, 2009 to the present date. 24

REQUEST NO. 29: 25

27 28

All ledgers, books, cash receipt journals, accounts receivable journals, accounts payable 26 journals and all other journals kept or maintained in connection with any business or businesses in which YOU hold or have held an interest for the period of January 1, 2009 to the present date.

EXHIBIT "A'



1	individually or jointly with any other person, during the period of January 1, 2009 to the present	
2	date.	
3	REQUEST NO. 37:	
4	All life insurance policies or certificates of life insurance insuring YOUR life and any	
5	disability insurance insuring YOU, and any life insurance policies or certificates of life	
j	insurance insuring the life of any other person in which YOU are named as either primary or	
,	contingent beneficiary or owner for the period of January 1, 2009 to the present date.	
;	REQUEST NO. 38:	
	Any and all insurance policies whether life, health, disability or medical in YOUR	
	possession and/or control, insuring YOU, or YOUR spouse for the period of January 1, 2009 to	
	the present date.	
	REQUEST NO. 39:	
	Any and all insurance polices offering health, medical, dental, vision and/or mental	
	health benefits pursuant to which YOU currently have the right to cover yourself, YOUR	
	spouse, or YOUR children.	
	REQUEST NO. 40:	
	All life insurance policies, premium notices, loan statements, cash value statements and	
	correspondence RELATING TO any policies of insurance on YOUR life or YOUR spouse or	
	on which YOU are named or were the beneficiary or owner, during the period of January 1, 2009	
	to the present date.	
	REQUEST NO. 41:	
	WRITINGS since inception of any IRA accounts in which YOU hold or have held an	
	interest including copies of all statements.	
	REQUEST NO. 42:	
	All WRITINGS pertaining to any stock options in any corporation or other entity,	
	exercised or not yet exercised in which YOU have or have had an interest for the period of	
	January 1, 2009 to the present date, including copies of all of the options.	
;	REQUEST NO. 43:	
	7	

1	All WRITINGS reflecting each pension plan, 401(k) Plan, profit sharing plan, Keogh	
2	plan, salaried savings plan or other retirement plan in which any rights or benefits whatsoever,	
3	vested or unvested or otherwise contingent, are held or claimed by or for YOUR benefit,	
4	including without limitation, all WRITINGS reflecting contributions made by YOU or for	
5	YOUR benefit at any time for the period of January 1, 2009 to the present date and all	
6	WRITINGS reflecting YOUR current interest therein and value thereof.	
7	REQUEST NO. 44:	
8	All WRITINGS relative to all inter vivos trusts from which benefits have been received,	
9	are being received or will be received by YOU, whether such trusts are revocable or irrevocable	
10	for the period of January 1, 2009 to the present date.	
11	REQUEST NO. 45:	
12	All WRITINGS of all estates of decedents from which YOU have received, are	
13	receiving or will receive any inheritance in either personal property or real property assets, in	
14	trust or otherwise, or monetary assets of any kind for the period January 1, 2009 to the present	
15	date.	
16	REQUEST NO. 46:	
17	Copes of declarations of trust, and minute books for all trusts, to which YOU, are a party	
18	or have been a party for the period of January 1, 2009 to the present date.	
19	REQUEST NO. 47:	
20	Copies of any and all wills executed by YOU from all sources for the period of January	
21	1, 2009 to the present date.	
22	REQUEST NO. 48:	
23	Any and all WRITINGS of all monies borrowed by YOU from all sources for the period	
24	of January 1, 2009 to the present date.	
25	REQUEST NO. 49:	
26	WRITINGS that relate to any secured or unsecured loans made to YOU whether from a	
27	member of YOUR family, a banking institution or any individual or entity for the period of	
28	January 1, 2009 to the present date.	
	EXHIBIT "A"	



SERVING NON-PARTY DEPONENT or BUSINESS RECORDS CUSTODIAN

Who?

Where the witness whose deposition is sought is *not* a party (or a "party-affiliated" witness), a **subpoena** must be served to compel attendance, testimony, or production of documents. CCP §§ 2020.010(a)(1), 2025.280(b) (CCP § 1985 et seq. dealing with subpoenas generally also apply to deposition subpoenas except as modified by § 2020.010 et seq.; see CCP § 2020.030.)

Why?

 Personal Service of a deposition subpoena requires a person who is a resident of California to appear, testify and produce whatever documents or things are specified in the subpoena; and also to appear in any proceedings to enforce discovery. CCP § 2020.220(c)(3).

How?

Use the Mandatory Judicial Council Forms

The original subpoena and proof of service are retained by the subpoenaing party. They are *not* filed with the court unless relevant to a motion to compel. CRC 3.250(a)(1)

Three Types of Deposition Subpoenas for Non-Parties Deponents

1. Testimony Only Subpoena

A deposition subpoena may command only the attendance and testimony of the deponent.

2. Records Only Subpoena

A deposition subpoena may command only the production of business records for copying.

3. Records & Testimony Subpoena

A deposition subpoena may command both the production of records (any records) or other physical evidence and testimony ("records and testimony" subpoena) (CCP § 2020.020(a)-(c).)

Deposition Subpoena vs. Document Production Demands to a Party

- A "business records" subpoena is designed for discovery from nonparties CCP § 2020.020(b).
- Opposing party's records can be obtained by a CCP § 2031.010 inspection demand.
 - ... it is easier to obtain discovery from a nonparty using a "business records" subpoena than to obtain discovery from an opposing party under CCP § 2031.010.
 - This is because:
 - The "business records" subpoena requires production more quickly (*e.g.*, 15 days after service, as opposed to 30 days for § 2031.010 <u>et seq.</u> inspection demands).
 - If the opposing party refuses to comply with a § 2031.010 et seq. inspection demand, the burden is on the demanding party to file a motion to compel and show "good cause" for production. *No such showing is required to enforce a "business records" subpoena.* Moreover, the burden is usually on the person seeking to prevent disclosure to show grounds to quash or for a protective order.

Duties of The Custodian of Records

Where custodian directed to mail copies to professional photocopier:

- If item "1.a." on the "business records" subpoena form is checked, the custodian must mail to the deposition officer (professional photocopier):
 - A "true, legible and durable copy" of the business records; and affidavit *authenticating* the copies and the records (Ev.C. §1561.)
 - Documents must be mailed in a sealed envelope, with the records enclosed in an inner envelope marked with the name and number of the lawsuit, the custodian's name, and the date of subpoena written thereon (Ev.C. §1560(c); CCP §2020.430(b).)

- Where custodian directed to deliver copies to professional photocopier at custodian's address:
 - If item "1.b." on the "business records" subpoena form is checked, the custodian may either:
 - Allow the deposition officer to photocopy the records at the custodian's office; or
 - Allow the deposition officer to *pick up* at the custodian's office photocopies prepared by the custodian upon paying for the reasonable costs thereof. (Ev.C. § 1563; CCP § 2020.430(c).)
 - The custodian must also furnish an *affidavit* authenticating the records. (Ev.C. § 1561; CCP § 2020.430(a)(2).)

Where attorney assumes responsibility for inspection and copying:

- Alternatively, the subpoenaing attorney may direct the custodian to make the records available for inspection and copying by the attorney or the attorney's representative at the custodian's business address during normal business hours. (Ev.C. § 1560(e); CCP § 2020.430(c)(1).)
 - If given at least 5 days' prior notice, the custodian must designate a time period of at least 6 hours on a date certain for this purpose.
 - Where this method is utilized, *two separate affidavits* (declarations) must be obtained:

Custodian's affidavit & Attorney's affidavit

Attorney should prepare and provide a template for the custodian to use in order to ensure that it meets the requirements of Evidence Code §§ 1560, 1561.

- Copies of nonparty business records produced in response to a subpoena duces tecum are admissible if accompanied by an affidavit (declaration) by the custodian or other qualified witness.
 - The affidavit (declaration) must:
 - Identify the records;
 - Describe the mode of preparation of the records; and
 - State that the copies are "true copies" of originals prepared in the ordinary course of business at or near the time of the event.
- The custodian's affidavit (declaration) is presumed true and the burden on opposing party to introduce contrary evidence. (Ev.C. §§ 1560– 1562.)

Admissible at Trial?

If the foregoing requirements are met, then copies of business records are admissible at trial in lieu of the originals; and the custodian's (or attorney's) affidavit may authenticate both the records and the copies. (CCP § 2020.430(f); Ev.C. §§ 1561, 1562; see People v. Blagg (1968) 267 Cal.App.2d 598, 609–610 (Whether copies or originals, the records involved must qualify as "business records" under Ev.C. § 1271 to be admissible evidence.)

Civil Subpoena Duces Tecum for Trial

Judicial Council Form

 Civil Subpoena (Duces Tecum) for Personal Appearance and Production of Documents and Things at Trial or Hearing and Declaration

How?

- Prepare Civil Subpoena (Duces Tecum) and Notice of Consumer of Records
- Serve Civil Subpoena (Duces Tecum) and Notice of Consumer of Records on Party/Witness.
- Forward and/or Pay witness fees to deponent/non-party witness.
- Personally serve Subpoena on non-party witness with BOTH Notice of Consumer and Civil Subpoena (Duces Tecum).

SERVING THE DEPOSITION SUBPOENA

How?

Serve the deposition subpoena via Personal Service

Why?

 Personal service obligates any resident of California to appear, testify and produce whatever documents or things are specified in the subpoena; and to appear in any proceedings to enforce discovery. CCP § 2020.220(c)

How to Enforce?

1. Motion to compel compliance

- If a nonparty disobeys a deposition subpoena, the subpoenaing party may seek a court order compelling the nonparty to comply with the subpoena within 60 days after completion of the deposition record. (CCP §§ 1987.1, 2025.480(b))
- A nonparty opposing such motion without substantial justification is subject to sanctions. (CCP §§ 1987.2(a), 2020.030, 2025.480)
- The objections or other responses to a business records subpoena are the "deposition record" for purposes of measuring the sixty (60) day period for a motion to compel. (<u>Unzipped Apparel, LLC v. Bader</u> (2007) 156 Cal.App.4th123, 132–133.)

2. Contempt proceedings

- A deponent who disobeys a deposition subpoena may be punished for contempt, without the necessity of a prior court order directing compliance by the witness or any showing of good cause. (CCP §§ 1209(a)(9), 1991.1, 2020.240, 2023.030(e))
 - Consider contempt proceedings only if the witness disobeys a specific court order or otherwise is persistently recalcitrant.

3. Civil damages action by the aggrieved party

- The subpoenaing party can also file a civil action against the witness who disobeys the subpoena to recover a forfeiture of \$500, plus all damages sustained as a result of the witness' failure to attend (e.g., attorney fees and deposition expenses). (CCP §§ 2020.240, 1992)
 - "The simple economics of modern litigation essentially preclude such an action." <u>New York Times v. Sup.Ct.</u> (Sortomme) (1990) 51 Cal.3d 453, 464.

CHALLENGING THE DEPOSITION SUBPOENA WHO?

Any of the three parties involved may challenge the subpoena

Nonparty Witness Who/Was Subpoenaed

Plaintiff / Petitioner

Defendant / Respondent

WHY?

A Deposition Subpoena may be attacked on the following grounds:

a. Defects in Form or Content of Subpoena:

 These failures can include inadequate description of requested documents in "records only" or "records and testimony" subpoenas.

b. Defects in Service of the Subpoena:

 These failures can include, failure to properly identify person, failure to properly tender fees; failure to properly serve named party; and

c. Defects with Documents Requested:

- These failures can include requests for documents that are not within permissible scope of discovery.
- For example, the requested documents are subject to objections that:
 - the documents are "privileged";
 - "subject to privacy protections"; or
 - constitute "attorney/work product"; or
 - simply not "relevant to the subject matter".
- In addition, the requests are simply unjustly burdensome or oppressive demands.
- In addition, the requests invoke the privacy concerns, (e.g., "Consumer's" right of privacy in "personal records" or "Employee's right of privacy in "employment records" (CCP §§ 1985.3(e), 1985.6.)

HOW TO OPPOSE?

1. Procedure: Motion to Quash Who Must File It?

 A party to the action must file a motion to quash to stay production of the subpoenaed documents (CCP § 1985.3(g).)

When Do You File It?

- The Motion to Quash must be served on the witness and deposition officer five (5) days before the date set for production of the subpoenaed records (CCP §§ 1985.3(g), 1985.6(f).)
- Failure to meet this deadline does not invalidate the motion but excuses the officer from liability for improper release of the subpoenaed records

What Is Required For Motion to Quash?

- **1.** Points & Authorities
- 2. Declaration of Good Faith Meet & Confer

3. Separate Statement

A motion to quash production of documents at a deposition must be accompanied by a separate statement setting forth the particular documents or demands at issue and the factual and legal reasons why production should not be compelled. (CRC 3.1345(a)(5).)

Sanctions?

Discretionary Against Losing Party

If the Court finds that the Motion was "made or opposed in bad faith or without substantial justification, or that one or more of the requirements of the subpoena was oppressive," then the Court may order the losing party to pay the prevailing party's expenses, including reasonable attorney fees, incurred on the motion to quash. (CCP § 1987.2(a).)

Mandatory In Certain Situations

- Notably, the court **must** make such an award where the subpoena was served on an Internet Service Provider (ISP) for "personally identifying information" if :
- The information is sought for use in litigation outside California involving the moving party's exercise of free speech rights (e.g., a defamation action based on anonymous Internet postings); and
- The motion is granted because the respondent fails to make a prima facie showing of a valid cause of action. (CCP § 1987.2(b).)

Pending Outcome of Motion to Quash Production Is Automatically Stayed (CCP §§ 1985.3(g), 1985.6(f)(3).)

2. Procedure: Written Objections

Who?

Nonparty "Consumer" (CCP §1985.3)

"Employee" (CCP §1985.6)

One who is *not* a party to the action is not required to file a motion to quash. (CCP § 1987.1(c).)

What?

Written Objections

Serve subpoenaing party, the records custodian *and* the deposition officer with written objections to production of the subpoenaed records, stating specific grounds on which production of the records should be prohibited (*e.g.*, invasion of privacy). (CCP §§ 1985.3(g), 1985.6(f)(2).)

Pending Resolution of the Written Objections Production Is Automatically Stayed

Service of written objections by a nonparty "consumer" or "employee" automatically excuses the custodian and deposition officer from producing the subpoenaed records until the court orders their production or the parties stipulate thereto. (CCP §§ 1985.3(g), 1985.6(f)(3).)

Getting Around Written Objections

Who?

 Burden of obtaining a court order for the documents is on the party seeking the discovery. (CCP §§ 1985.3(g), 1985.6(f)(4)).

What?

Procedure: Motion to enforce subpoena over written objections. (CCP §§ 1985.3(g), 1985.6(f)(4)).

- **1.** Points & Authorities
- **2. Separate statement** (CRC 3.1345(a)(5)).
- 3. Attempt to resolve informally

Declaration showing a "reasonable and good faith attempt at informal resolution of the dispute" between the party requesting the records and the "consumer" or "employee" whose records are involved or counsel for such person. (CCP §§ 1985.3 (g), 1985.6(f)(4)).

4. Serve Motion on all interested parties

 Although not specifically required by statute, on the "consumer" or "employee" if not a party to the action.

When?

Within twenty (20) days after service of the written objections. (CCP §§ 1985.3(g), 1985.6(f)(4)).
Enforcing The "Written Objections"

Who?

Any party or witness

How?

Protective Order against the subpoena or deposition proceedings.

The court may make whatever orders are appropriate to protect any party, witness or "consumer" from "unreasonable or oppressive demands, including unreasonable violations of a witness' or consumer's right of privacy." (CCP § 1987.1; see CCP § 2025.420(b))

Admissibility of Subpoenaed Documents

Why Is Admissibility In Question?

Hearsay

Hearsay is an out of court statement made for the truth of the matter asserted. (Evid.C. §1500).

Exception

 Business Records Exception to the Hearsay Rule

Business records constitute hearsay, but are admissible as an "exception" under the "Business Records" exception in California *if* there is a preliminary showing that the record is sufficiently reliable and *only* for **two** distinct hearsay purposes:

1. To prove the occurrence or existence of an act, condition or event recorded in the record (Ev.C. §1271).

However, where a record is offered to prove an event or condition occurred or existed, it must appear that the sources of information and method and time of record preparation "were such as to indicate its trustworthiness." (Ev.C. §1271(d)).

OR

2. Where a record is offered to prove the nonoccurrence or nonexistence of an act, condition or event not recorded in the record. (Ev.C. §1272).

However, where the absence of a business record entry is offered to prove an event or condition did not occur or exist, it must appear that the sources of information and method and time of record preparation "were such that the absence of a record" of the matter in question "is a trustworthy indication" the matter did not occur or exist." (Ev.C. §1272(b)).

Business Record Exception to the Hearsay Rule, Foundational Requirements to Prove Event Occurred

- A business record is admissible to prove the occurrence or existence of the act, condition or event recorded if all of the following foundational requirements are met:
 - The writing must have been made in the "regular course of business"
 - The writing must have been made at or near the time of the act, condition or event recorded;
 - The record's custodian "or other qualified witness" must testify to its identity and mode of preparation; and
 - The sources of information on which the record is based and method and time of the record's preparation "must be such as to indicate its trustworthiness". (Ev.C. § 1271).

These are preliminary fact determinations and are subject to the trial court's broad discretion.

 "In determining whether a writing meets the requirements of [Evidence Code §1271] the trial judge is vested with broad discretion the exercise of which, absent a showing of abuse, will not be disturbed on appeal." <u>Exclusive Florists, Inc. v. Kahn</u> (1971) 17 Cal.App.3d 711, 716; <u>see also Aguimatang v. California</u> <u>State Lottery</u> (1991) 234 Cal.App.3d 769, 797.

The Business Records exception to the Hearsay Rule essentially requires that the subpoenaed documents were:

- Prepared in the "regular course of business"
- Prepared in the ordinary course of the business activity involved
- That it was the business' regular practice to make the particular record
- That the entry was based upon the firsthand observation of someone whose job it is to know the facts recorded.
 - Where it appears that the record was NOT based on the recorder's personal knowledge or that of someone with a business duty to observe and report the matters recorded is inherently unreliable for its truth and thus, *inadmissible* as substantive evidence of the matter so recorded. (Ev.C. § 1271; Zanone v. City of Whittier (2008) 162 Cal.App.4th 174, 191).

The Business Records Exception Limitation:

- Must be a Business Record of "act, condition or event" – not mere conclusion
 - A writing prepared as a part of a normal business activity is admissible under the "business records exception" only if it records (and is offered to prove) an act, condition or event (or the absence thereof) in the ordinary course of business. Writings reporting only conclusions are not made admissible by Evidence Code §§ 1271 and 1272 simply because they appear in a business record. (People v. Reyes (1974) 12 C3d 486, 503, 116 CR 217, 227; Taggart v. Super Seer Corp. (1995) 33 CA4th 1697, 1708, 40 CR2d 56, 63).

Requirements to Prove Event DID NOT Occur

Evidence of the absence from a business record of a particular act, condition or event is admissible notwithstanding the hearsay rule to prove the nonoccurrence of the act or event or the nonexistence of the condition. A business record is admissible to prove the occurrence or existence of the act, condition or event recorded if all of the following foundational requirements are met:

1. Matter would have been recorded in "regular course of business"

- The proponent must demonstrate it was the regular course of the particular business to make records of the type of acts, conditions or events in issue at or near the time of the act, condition or event (Ev.C. § 1271).
- In other words, it must appear the particular entry would have been made, had the act, condition or event occurred, in the routine course of the organization's primary business activities

2. Regular business practice to preserve records:

- The proponent must also demonstrate it was the organization's regular business practice to preserve records of the type in question. (Ev.C. § 1272(a)).
- In other words, if the business did not make it a habit to preserve records of acts, conditions or events of the type in question, the absence of such a record is simply not reliable proof that the act, condition or event did not occur or did not exist.

3. Trustworthiness

- It must appear that the sources of information and method and time of preparation of the business' records "were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist." (Ev.C. § 1272(b)).
- The trustworthiness decision lies within the trial court's broad discretion.

Rationale:

- The failure of a regularly-kept and properly authenticated record to mention a matter that would ordinarily be mentioned in the normal course of business is deemed sufficiently reliable proof of its nonexistence.
- Stated another way, if the record is deemed sufficiently reliable to prove an affirmative matter, logically it should be just as reliable to prove a negative fact. See People v. Torres (1962) 201 Cal.App.2d 290, 297.

Exception: Past Recollection Recorded

In some situations, writings admissible under § 1271 might also be admissible under the "past recollection recorded" hearsay exception. (Ev.C. § 1237).

This exception, however, rest on an entirely distinct foundational requirements from the Business Records exception – <u>Evidence Code</u> § 1237 encompasses any writing made by the declarant.

Declarant's present recollection:

- A writing is admissible as substantive proof as "past recollection recorded" only if the declarant's memory is so impaired that he or she cannot testify accurately to the recorded events from present recollection.
 - NOTE: Business records are admissible under Evidence Code §1271 regardless of whether the declarant can now testify fully and accurately to the recorded events.
 - As such, one of the primary objectives of § 1271 is to eliminate the necessity of calling as witnesses each employee who prepares business reports. (People v. Williams (1973) 36 Cal.App.3d 262, 275; see Levy-Zentner Co. v. Southern Pac. Transp. Co. (1977) 74 Cal.App.3d 762, 785.)

Multiple Hearsay Problems

- Even when a writing is prepared in the normal course of business and qualifies as a business record under <u>Evidence Code</u> §1271, it may encounter "multiple hearsay" problems because such records often contain *extrajudicial statements made by others*.
- Each layer of multiple hearsay must be analyzed separately. (See People v. Ayers (2005) 125 CalApp.4th 988, 994–996; Zanone v. City of Whittier (2008) 162 Cal.App.4th 174, 192; Alvarez v. Jacmar Pac. Pizza Corp. (2002) 100 Cal.App.4th 1190, 1205, 122).

Introduction of Business Records at Trial or Hearing -- How?

Introduce properly authenticated business record.

Introduction of the record itself (provided it is sufficiently authenticated to satisfy the trustworthiness requirement);

Qualified Witness Testimony

Testimony from the business records custodian "or other qualified witness" (employee who can vouch for the accuracy of the recordkeeping process), when the records are so voluminous as to make it "impossible or impractical to produce them"

Qualified Witness Affidavit

- Affidavit from the records custodian "or other qualified witness" (Ev.C. §§1560, 1561.)
 - NOTE: Proof by affidavit is not permissible in criminal proceedings, as it would violate the defendant's Sixth Amendment right of confrontation. (People v. Dickinson (1976) 59 Cal.App.3d 314, 318–320.)

QUESTIONS.....