



## SAN MATEO COUNTY LAW LIBRARY

### RESEARCH GUIDE #14

## **BUSINESS RECORDS SUBPOENA:** **GETTING COPIES OF DOCUMENTS FROM A NON-PARTY**

This resource guide only provides guidance, and does not constitute legal advice. If you need legal advice you need to speak with an attorney. To find an attorney to assist you, you may contact the San Mateo County Lawyer Referral Service at (650) 369-4149.

### **WHAT IS A “BUSINESS RECORDS SUBPOENA?”**

Parties in a lawsuit can use a “business records subpoena” to obtain records and information from non-party witnesses, such as banks, employers, or police departments (Cal. Code of Civil Procedure (CCP) § 2020.41). **The procedure requires several steps and takes a month or more, so start early!**

### **WHAT TO DO:**

#### **STEP 1: Determine Whether the Documents are “Consumer or Employee” Records**

*If they are, you need to add about two weeks to the process.*

“Consumer records” are records sought from telephone companies; banks, insurance and financial services providers; health care providers; schools; attorneys; or accountants (CCP § 1985.3(a)(1)). An “employee” is an individual who is or has been employed by a witness whose records are sought. “Employee records” include books, documents, other writings or electronic data pertaining to employment of any employee or former employee (CCP § 1985.6).

#### **STEP 2: Set a Date and Location for Production**

1. For consumer/employee records, this must be at least 30 days away.
2. For non-consumer/employee records, this must be at least 15 days away.

Contact a copy service (copy shop) in your area to see if they handle document subpoenas. The service you hire to do this is called the “Deposition Officer.” The Deposition Officer must be a professional photocopier registered under California Business & Professions (Bus. & P) Code §§22450-22463. You may need to contact several to find one that provides this service.

### **STEP 3: Complete the Required Forms**

You will need two forms to subpoena business records:

- Deposition Subpoena for Production of Business Records ([SUBP-010](#))
- Attachment ([MC-025](#)), describing the records you need (you will number this “Attachment 3”)

Completed samples are at the end of this Guide.

When you issue a *Deposition Subpoena for Production of Business Records* ([SUBP-010](#)), there are three options for production in the first paragraph of the first page. Option “a” is having records delivered to the Deposition Officer (copy shop employee), which is easiest in most situations. Note that you must arrange to pay the witness their costs before taking delivery of the copies. Talk to the Deposition Officer about how to accomplish this. One option is to ask the Deposition Officer to pay the witness and then bill you. Under option “b,” a Deposition Officer goes to the witness’ place of business to pick up the copies. Under “c,” the subpoenaing party (you) goes to the witness’ place of business and copies the records (CCP §2020.430). Most self-represented litigants should choose option “a.”

**NOTE:** Telephone records, email, social media, and texts may require you to get the consumer’s signature consenting to release. Cal. Public Utilities Code § 2891 and the Federal Stored Communications Act (18 U.S.C. §§ 2701-2712) protect these types of records. A sample authorization form can be found in Cal. Forms of Pleading and Practice, Ch.535, sec. 535:71. If the consumer will not sign the release voluntarily, you may need to get a court order requiring the consumer to sign it. This process is not covered in this guide.

### **STEP 4: Have the Court Clerk “Issue” the Subpoena**

Take the *Deposition Subpoena for Production of Business Records* ([SUBP-010](#)) to the court where your case is pending to be “issued” (stamped with the court seal). When the clerk stamps it with the court’s seal, it becomes an official court order. For San Mateo County, these are filed at the Hall of Justice located at 400 County Center Redwood City, CA 94063.

When you receive the issued subpoena, make enough copies of the stamped subpoena for yourself, the witness, and all parties. You will serve these copies in later steps.

**NOTE:** if the records are NOT consumer or employee records, skip to STEP 9.

To protect people's privacy, subpoenas of consumer and employee records require an extra procedure to give the consumer/employee time to object. This can add as much as two weeks to the process, more if they object. The consumer/employee must be served at least 10 days (5 if you use personal service) before you serve the witness (CCP § 1985.3(b)(3)) and at least 25 days before the date of production (20 if you use personal service) (CCP § 2020.410).

**NOTE:** You can skip the Notice to Consumer/Employee steps if the person whose records you need is willing to sign an authorization. Include it instead of the copy of *Notice to Consumer or Employee and Objection* in steps 9 and 10. Sample authorization forms can be found in Cal. Forms of Pleading and Practice, Ch.535, sec. 535:70-73.

#### **STEP 5: Complete the Additional Form for Consumer/Employee Records**

In addition to the forms in Step 3, fill out page 1 of a *Notice to Consumer or Employee and Objection* ([SUBP-025](#)). Make enough copies of all forms for yourself, the witness, and all parties. You will serve these copies in later steps.

#### **STEP 6: Serve the Consumer/Employee with the Deposition Subpoena and Notice to Consumer or Employee**

Serve the consumer/employee with a copy of:

- Stamped *Deposition Subpoena for Production of Business Records* ([SUBP-010](#))
- *Attachment* ([MC-025](#)) (describes the records you need)
- *Notice to Consumer or Employee and Objection* ([SUBP-025](#))

You can have this served by mail to the consumer/employee's last-known address or by personal service if you are low on time. The person who is serving the Notice for you must complete the proof of service on the back of the original *Notice to Consumer or Employee and Objection* ([SUBP-025](#)). The server then gives the signed original Notice to you. You will use it in STEP 7.

#### **STEP 7: Serve All Parties by Mail**

**NOTE:** If the only other party is the consumer/employee, skip this step.

Serve by mail all parties (or their attorneys) with copies of:

- *Deposition Subpoena for Production of Business Records* ([SUBP-010](#)) (plus *Attachment* ([MC-025](#)))
- *Notice to Consumer or Employee and Objection* ([SUBP-025](#)) (showing the signed proof of service on the back)

Keep the originals for your files.

The person who is serving your documents must complete a *Proof of Service by First Class Mail* ([POS-030](#)) form. The proof of service form should be completely filled out, but not signed.

Make a copy of the unsigned proof of service before proceeding. The server (person over the age of 18 who is not a party to the case) must then mail a copy of the documents along with a copy of the unsigned Proof of Service form on the opposing attorneys or self-represented litigants.

The server then signs the Proof of Service form, and gives it to you. Keep this in your files.

#### **STEP 8: Wait for Consumer/Employee to Respond**

Wait at least 10 calendar days (5 if you had the consumer personally served) before moving on to Step 9, "Serve the Witness."

The consumer/employee's deadline to object is 5 days before the production date. A non-party consumer/employee just needs to fill out the objection *on Notice to Consumer or Employee and Objection* ([SUBP-025](#)). A consumer/employee who is a party needs to file a motion to quash the Subpoena in court.

If the consumer/employee objects or files a motion to quash, the witness is not permitted to respond to your Deposition Subpoena. You may make a Motion to Compel Production (deadline: 20 days after service of the written objection), or file an Opposition to the Motion to Quash, as appropriate. Motions to Quash Subpoenas are not covered in this Guide; see a reference librarian for more information on this process.

#### **STEP 9: Serve the Witness (Company/Agency with the Business Records) by Personal Service at Least 15 Days before Production Date**

Serve these documents at least 15 days before the production date (CCP § 2020.410(c)).

Fill out but do not sign a *Proof of Service by Mail* ([POS-030](#)) listing all of the following documents and showing proof of service by mail on all parties. This Proof of Service will be used in Step 10, but you must include a copy of it in the packet you serve the witness.

1. If the documents are NOT consumer/employee records, have the witness *personally served* with:
  - *Deposition Subpoena for Production of Business Records* ([SUBP-010](#))
  - *Attachment* ([MC-025](#)) (describes the records you need)
  - *Proof of Service by Mail* ([POS-030](#)) on all parties (unsigned but otherwise complete)
  
2. If the documents ARE consumer/employee records, have the witness *personally served* with:
  - *Deposition Subpoena for Production of Business Records* ([SUBP-010](#))
  - *Attachment* ([MC-025](#)) (describes the records you need)
  - *Notice to Consumer or Employee and Objection* ([SUBP-025](#)), showing signed proof of service on the back
  - *Proof of Service by Mail* ([POS-030](#)) on all parties (unsigned but otherwise complete)

The server (a person over the age of 18 who is not a party to the case) must personally deliver the

required documents on the witness or its representative. If the witness is an organization, any officer, director, custodian of records, or any agent or employee authorized by the organization to accept service of a subpoena can be served on behalf of the organization (CCP § 2020.220).

The server then signs the proof of service form on the back of the *Deposition Subpoena for Production of Business Records* ([SUBP-010](#)) and returns it to you. Keep this in case you need it for a motion later.

**NOTE:** The witness may demand payment of reasonable costs prior to providing the documents to the Deposition Officer. These costs can include:

- \$0.10 per page for copying documents 8 ½" x 14" or less
- \$0.20 per page for copying documents from microfilm
- Actual costs for oversize documents or documents requiring special processing
- Clerical costs of \$24 per hour per person
- Actual postage costs
- Costs for necessary services of third persons, including retrieval from microfilm

These costs are paid when the witness delivers the business records and an itemized statement listing costs. Evid C §§ 1563(b)(1), (2), & (3). If you requested to inspect the original documents at the witness' location, the witness is entitled to a fee of \$15, so write a check for the server to take along Evid C §1563(b)(6).

#### **STEP 10: Serve the Other Party/Parties (Unless You Served in Step 7)**

**NOTE:** Skip this step if you completed STEPs 5-8, *Notice to Consumer or Employee*. If you did, the service in STEP 8 is sufficient.

Serve all parties by mail with copies of all documents listed in STEP 9. If they have attorneys, serve the attorneys instead. The proof of service form should be completely filled out, but not signed.

Make a copy of the unsigned proof of service before proceeding. The server (a person over the age of 18 who is not a party to the case) must then mail a copy of the documents along with a copy of the unsigned proof of service form on the opposing attorney(s) or self-represented litigant(s).

The server then signs the original Proof of Service form, and gives it to you.

#### **STEP 11: Wait for the Documents**

You're done for now. The documents should arrive at the copy service by your chosen production date. If your Deposition Subpoena is ignored, or you get nothing but a written objection, you may need to file a motion in court to compel the witness to produce the documents.

**SUBP-010**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>PAUL SAMPLE</b> <b>2036 DONNER DRIVE</b> <b>SACRAMENTO, CA 95826</b> TELEPHONE NO: <b>916-123-4567</b> FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>IN PRO PER</b>	FOR COURT USE ONLY Your name, address, and phone number. "In Pro Per" means you are representing yourself.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN MATEO</b> STREET ADDRESS: <b>400 COUNTY CENTER</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>REDWOOD CITY CA 94063</b> BRANCH NAME: <b>SOUTHERN BRANCH</b>	County and address of the court where the case is pending.
PLAINTIFF/PETITIONER: <b>PAUL SAMPLE</b> DEFENDANT/RESPONDENT: <b>PETER PERPETRATOR</b>	Your name and the other party's name as they appear on the complaint
<b>DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS</b>	Case number <b>34-2011-00442345</b>
THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number) <b>ACME, INC., 987 MAIN ST., SACRAMENTO CA 95814</b>	Name, address, phone number of the "witness" (company with records)
1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows: To (name of deposition officer): <b>SPEEDY COPY</b> On (date): <b>JANUARY 15, 2012</b> At (time): <b>10AM</b> Location (address): <b>567 OAK ST. SACRAMENTO CA 95814</b> Do not release the requested records to the deposition officer prior to the date and time specified above.	Date, place and time for delivery of the copies ("the production date"), the date you chose in Step 2.
a. <input checked="" type="checkbox"/> by delivering a true, legible, and durable copy of the business records described in item 3, enclosed with the title and number of the action, name of witness, and date of subpoena clearly marked on the wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1. b. <input type="checkbox"/> by delivering a true, legible, and durable copy of the business records described in item 3 to the witness's address, on receipt of payment in cash or by check of the reasonable costs under Evidence Code section 1563(b). c. <input type="checkbox"/> by making the original business records described in item 3 available for inspection at your business address under reasonable business hours.	Check: "a" if you are asking the witness to mail copies of the business record to the deposition officer (most common option). Check "b" or "c" to use those options.
2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after service, or 15 days after service, whichever date is later). Reasonable costs of making copies, and postage, if any, are recoverable as set forth in Evidence Code section 1561. 3. The records to be produced are described as follows: <input checked="" type="checkbox"/> Continued on Attachment 3.	Leave this area blank. Check "Continued on Attachment 3."
4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER INFORMATION UNDER EVIDENCE CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER INFORMATION.	Leave this area blank. The clerk will fill it in when you take the subpoena to court to get it issued in Step 4.
DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY THIS SUBPOENA. Date issued: <b>DECEMBER 14, 2011</b>	Leave this area blank. The clerk will fill it in when you take the subpoena to court to get it issued in Step 4.
(TYPE OR PRINT NAME) _____ (SIGNATURE OF PERSON ISSUING SUBPOENA) _____ No. 55 2011	Leave this area blank. The clerk will fill it in when you take the subpoena to court to get it issued in Step 4.

**NOTE:** Fill in the names and case number on page 2, and leave the rest blank. The person who serves the subpoena in Step 9 will fill it out.

The "deposition officer" is the copy service you hired in Step 2.



SHORT TITLE: Sample v. Perpetrator	CASE NUMBER 34-2011-00112345
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Short title (party1 v party2)      ATTACHMENT (Number): 3      Case number

*(Do not be used with any Judicial Council form.)*

1. Any and all any and all police reports, arrest reports, case reports, supplementary reports, street files, laboratory reports, notes and memoranda, printed or otherwise, and files relating to the arrest of [Party Name], date of birth of [Party Name], on or about [Date of Arrest or Incident], at or near [Location].
2. Any and all phone records for the year of [year or range of dates] pertaining to [name of Consumer/Employee] at [Consumer/Employee's phone number or numbers], including but not limited to text and data and call records.
3. Employment records for Employee [employee's name] whose Social Security number is \_\_\_\_\_, and whose date of birth is \_\_\_\_\_, including the following: All documents relating to Employee's employment from [date] to [date], including but not limited to pay checks, pay stubs, reviews, correspondence, and W-2 forms.
4. All documents relating to medical and physical therapy, examination, treatment and services rendered to [Party] from [date] to the present, including but not limited to reports, summaries, diagnoses, x-rays, statements, and billings.
5. All documents relating to inspection, maintenance, and repair of the automobile [Party] was operating during the accident which is the subject of this action, including repair estimates, repair receipts, owner's manuals, and records of repairs made by any person or entity, including [Party], from [date] to the present.

example

Specifically describe each item or reasonably particularize each category of item to be produced (CCP § 2025.410(a)).

Specific information that is identifiable only to the deponent's records system (e.g., a policy number or the date the consumer interacted with the witness) is not required. (CCP § 2020.410(a)-(b)).

Sample language for several common situations is listed here.

*(If the item that this Attachment concerns is made under penalty of perjury, all statements in this Attachment are made under penalty of perjury.)*

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*(Add pages as required)*

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>PAUL SAMPLE</b> 2036 DONNER DRIVE SACRAMENTO, CA 95826  TELEPHONE NO.: 916-123-4567 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>IN PRO PER</b>	<b>FOR COURT USE ONLY</b>  Your name, address, and phone number. "In Pro Per" means you are representing yourself.  County and address of the court where the case is pending.  Your name and the other party's name as they appear on the complaint  34-2011-00112345  Case number
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO</b> STREET ADDRESS: MAILING ADDRESS: <b>400 COUNTY CENTER</b> CITY AND ZIP CODE: <b>REDWOOD CITY CA 94063</b> BRANCH NAME: <b>SOUTHERN BRANCH</b>  PLAINTIFF/ PETITIONER: <b>PAUL SAMPLE</b> DEFENDANT/ RESPONDENT: <b>PETER PERPETRATOR</b>	
<b>NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION</b> (Code Civ. Proc., §§ 1985.3, 1985.6)	

**NOTICE TO CONSUMER OR EMPLOYEE**

TO (name): **THERESA THIRDPARTY**

1. PLEASE TAKE NOTICE THAT **REQUESTING PARTY (name): PAUL SAMPLE** **Name of the consumer/employee**  
 RECORDS FOR EXAMINATION by the parties to this action on (specify date): **JANUARY 15, 2012** **Date of production (from Step 2)**  
 described in the subpoena directed to **witness (specify name and address of person or entity from whom records are sought): ACME, INC. 987 MAIN ST., SACRAMENTO CA 95814** **Name and address of the witness (company that has the records)**

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 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 date** 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 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 MADE AVAILABLE TO THE REQUESTING PARTY.**

3. YOU OR YOUR ATTORNEY MAY CONTACT **Date, fill in your name, and sign** agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and 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: **DECEMBER 14, 2011**

**PAUL SAMPLE**  
 (TYPE OR PRINT NAME) (SIGNATURE OF  REQUESTING PARTY  ATTORNEY)

**OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS**

1.  I object to the production of all of my records specified in the subpoena.

2.  I object only to the production of the following specified records:

3. The specific grounds for my objection are as follows:

NOTE: Leave this portion blank. The consumers/employees fill it in if they object to the production.

Date: **NOTE: Fill in the names and case number on page 2, and leave the rest blank. The person who serves the notice in Step 6 will fill it out.**

(SIGNATURE)

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 Code of Civil Procedure,  
 §§ 1985.3, 1985.6,  
 2036 (a), 2036.430



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Paul Sample, in Pro Per</b> <b>3036 Donner Dr.</b> <b>Sacramento, CA 95826</b>  TELEPHONE NO.: 916-123-4567 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>IN PRO PER</b>		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN MATEO</b> STREET ADDRESS: MAILING ADDRESS: <b>400 COUNTY CENTER</b> <b>REDWOOD CITY CA 94063</b> CITY AND ZIP CODE: BRANCH NAME: <b>SOUTHERN BRANCH</b>		
PETITIONER/PLAINTIFF: <b>PAUL SAMPLE</b> RESPONDENT/DEFENDANT: <b>PETER PERPETRATOR</b>		Case number:
<b>PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL</b>		CASE NUMBER: <b>34-2011-00112345</b>

(Do not use this Proof of Service by First-Class Mail—Civil for Summons and Complaint.)

- I am over 18 years of age and not a party to this case. I am employed in the county where the mailing took place.
 

Home or business address of person serving the documents
- My residence or business address is:
 

876 Oak St.  
Sacramento CA 95814

Date documents were mailed

City and State where documents were mailed
- On (date): Dec. 12, 2011 I mailed from (city and state): Sacramento, California the following documents (specify):
 

Deposition Subpoena for Production of Documents  
Notice to Consumer or Employee

List all documents that were mailed. If you need more room, check this box and use form POS-030(D) to list all the documents.
- The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).
- I served the documents by enclosing them:
 

a.  depositing the sealed envelope in a mail box, or mailed at a US Post Office, check box a. If it was placed in your business's outgoing mail, check box b.

b.  placing the envelope for collection at a business's practice for collecting and mailing, if it is deposited in the ordinary course of business, it is deposited in the ordinary course of business with postage fully prepaid.
- The envelope was addressed and mailed as follows:
 

a. Name of person served: Peter Perpetrator

b. Address of person served:  
987 Main St.  
Sacramento CA 95814

The name and address of the person being served, at the address listed on the Summons. If the other party has an attorney, the attorney should be served. If multiple people are served, check this box and use form POS-030(p) to list all parties served.
- The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (form POS-030(D)).

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

Date: Dec. 12, 2011

Sally Server

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)