RESOLUTION 03-01-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to change the wording of Code of Civil Procedure section 1283.8 to read as follows:

§ 1283.8

The award shall be made within the time fixed therefor by the agreement or, if not so fixed, within 30 days of the final hearing date, or within such time as the court orders on petition of a party to the arbitration. The parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an award was not made within the time required unless he gives the arbitrators written notice of his objection prior to the service of a signed copy of the award on him

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS:

The Problem: The code currently does not provide a time limit for an arbitrator's award where the parties agreement does not provide a time limit. An arbitrator's delay can be costly and frustrating to the parties involved. An arbitrator's delay is often because of nonpayment of their fee by one of the parties. This prejudices the winner of the arbitration. In personal injury cases, it is often an uninsured/underinsured motorist claimant who is prejudiced by the delay. If the arbitrator wants additional time, the arbitrator should request the parties' agreement.

The Solution: Amend Code of Civil Procedure section 1283.8 to require an arbitrator's award be made within 30 days of the final hearing date, whether or not they have been paid.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION:
This proposed resolution does not affect any other law, statute or rule.

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RESOLUTION 03-02-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 425.16 to read as follows:

§ 425.16

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover that defendant’s attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney’s fees and costs if that cause of action is brought pursuant to Section 11130, 11130.3, 54960, or 54960.1 of the Government Code, or pursuant to Chapter 2 (commencing with Section 7923.100) of Part 4 of Division 10 of Title 1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering attorney’s fees and costs pursuant to Section 7923.115, 11130.5, or 54960.5 of the Government Code.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, “act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue” includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise

of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

~~(j)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by email or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.~~

~~(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.~~

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 425.16 was enacted in 1992 for the purpose of discouraging litigation that interferes with free speech rights. Because it was then a new procedure, the legislature included subdivision (j), requiring litigants to report related motion activity to the Judicial Council and giving it reporting and record keeping responsibilities related to such motion. The reporting requirements were expanded in 1999 based on the argument of necessity for evaluation of the effectiveness of the Special Motion to Strike process. Subdivision (j) includes no sanction for anyone who fails to comply with this reporting process. It is now 2019, and the Special Motion to Strike process has been thoroughly examined by the courts. For example, as of January 4, 2019, the WestLaw database reflected 4,577 appellate cases in which section 425.16 was cited.

The Solution: This resolution would eliminate the reporting and record maintenance requirements, and thereby avoid unnecessary effort by conscientious attorneys and the concomitant unnecessary costs to them and/or their clients and/or the Judicial Council.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: K. Martin White

RESOLUTION 03-03-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 915, to read as follows:

§ 915

(a) The trial court shall retain jurisdiction to rule on the following posttrial motions after a notice of appeal has been filed, provided it does so within the statutory time period otherwise governing each motion:

(1) Motion for new trial (Code Civ. Proc., §§ 657–660);

(2) Motion for judgment notwithstanding the verdict (Code Civ. Proc., § 629);

(3) Motion to set aside or vacate the judgment (Code Civ. Proc., §§ 663–663a); including but not limited to a motion to vacate a judgment and enter a periodic payments judgment pursuant to Code of Civil Procedure section 667.7 or Government Code section 984, a motion to vacate a judgment and enter a judgment that accounts for settlement offsets, and a motion to reduce a judgment by the amount of collateral source payments pursuant to Government Code section 985;

(4) Motion to set aside or vacate an order or judgment pursuant to Code of Civil procedure section 473, subdivisions (b) and (d);

(5) Motion to tax and/or strike costs; and

(6) Motion for attorney fees.

(b) If no statutory time period already governs the time period for ruling on a posttrial motion, then the time period for ruling on a motion for new trial (Code Civ. Proc., § 660) shall govern.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

The Problem: Existing law provides that the trial court retains jurisdiction for certain posttrial motions even after a notice of appeal has been filed, but not other posttrial motions or motions to vacate. When a notice of appeal is filed while a motion for new trial is pending, the trial court retains jurisdiction to rule on the motion. (See Neff v. Ernst (1957) 48 Cal.2d 628, 634.) But when a notice of appeal is filed while a motion to vacate is pending, the trial court does not retain jurisdiction to rule on the motion. (See Takahashi v. Fish & Game Commission (1947) 30 Cal.2d 719, 725, rev'd on other grounds in (1948) 334 U.S. 410.) Furthermore, there is currently a split of authority regarding whether the trial court retains jurisdiction if a motion for JNOV or motion to vacate is pending when a notice of appeal is filed. Compare Weisenburg v. Molina (1976) 58 Cal.App.3d 478, 486 [the trial court had no jurisdiction to hear the motions for judgment notwithstanding the verdict and to vacate the judgment after a notice of appeal was filed] with Foggy v. Ralph F. Clark & Associates, Inc. (1987) 192 Cal.App.3d 1204 [disagreeing with Weisenburg and holding that a motion for JNOV is collateral to the judgment and the trial court

retained jurisdiction to rule on both a motion for JNOV and a motion for new trial after a notice of appeal of appeal was filed]. The law is inconsistent and confusing for both courts and practitioners.

The Solution: This resolution solves this problem by explicitly granting the trial court jurisdiction to rule on posttrial motions and motions to vacate after a notice of appeal has been filed. This will eliminate the split of authority regarding whether the trial court has jurisdiction to hear and determine a JNOV or motion to vacate after an appeal has been taken. It will also provide clarity to courts and practitioners regarding when to bring posttrial motions or motions to vacate and the effect of an appeal on the outcome of pending motions. Allowing trial courts to rule on posttrial motions or motions to vacate may eliminate the need for appellate review in some cases.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: H. Thomas Watson, Horvitz & Levy LLP

RESOLUTION 03-04-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 1775.5, to read as follows:

§ 1775.5

The court shall not order a case into mediation where the amount in controversy exceeds one hundred and fifty thousand dollars ($150,000). The determination of the amount in controversy shall be made in the same manner as provided in Section 1141.16 and, in making this determination, the court shall not consider the merits of questions of liability, defenses, or comparative negligence.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: Mediation is a highly effective form of dispute resolution, with many statistics suggesting over 80% of mediated cases result in settlement. Large cases, even those where the amount in controversy is in the millions of dollars, are often successfully resolved by mediation. An amount in controversy above only $50,000 is much too low of a threshold to prevent courts from ordering parties to use a tool that is so effective.

Importantly, CCP §1775.5, which sets the current threshold at $50,000, was enacted in 1993. $50,000 in 1993 is equivalent in purchasing power to about $104,580 today, an increase of $53,519.03 over 30 years. The dollar had an average inflation rate of 2.46% per year between 1993 and today, producing a cumulative price increase of over 107%. So, the statute no longer reflects the intent of the drafters. Moreover, recent inflation has been at a 40 year high, and even if inflation is dramatically reduced, within only 10 years, what $50,000 was worth in 1993 will most likely be equivalent to $150,000.

Strikingly, courts are strained more today than they were 30 years ago, making the need for use of alternative dispute resolution more urgent than when the statute was enacted. Typically, court case filings exceed case dispositions, and when dispositions lag filings, courts accumulate new cases faster than they can close current cases, in turn causing current caseloads to grow. Before the pandemic, court clearance rates—defined as dispositions as a percentage of filings—averaged 86 percent. During the early part of the pandemic, California courts saw clearance rates drop and backlogs increase. Between March and August of 2020, California's clearance rate dropped to 73 percent.

The Solution: Allowing more cases to be referred to mediation would result in less congested dockets, furthering the highest priority of the State Bar of California: protection of the public, including greater access to the legal system—and that of the California Courts: to provide

accessible, efficient, and fair justice—by increasing the availability of the courts and providing timely access to trial for those parties that require or desire it. Given the efficacy of mediation, rapid inflation, and the urgent need to reduce the backlog, CCP §1775.5 should be updated to reflect the realities and needs of today. This proposed amendment is necessary to fulfil the intent of the statute as originally drafted.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

AUTHOR AND/OR PERMANENT CONTACT:
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RESPONSIBLE FLOOR DELEGATE: Ellie Vilendrer

RESOLUTION 03-05-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to add Code of Civil Procedure section 997, as follows:

§ 997

In any action, the parties, or their attorneys, shall meet and confer in person, by live video, or by telephone, prior to the earlier of 120 days after the defendant has been served with the summons and complaint, or 120 days after the defendant has appeared in the action, to consider the possibility of settlement. Parties, or their counsel, shall discuss the merits of the case at the meeting.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Orange County Bar Association

STATEMENT OF REASONS

The Problem: A society moving ever faster, stuck in an ever slower judicial system. Case backlogs have increased and will continue to do so. The time that it takes to conclude cases has increased and this will continue with the impending deluge of new filings. A shortage of judicial resources does not sufficiently meet the demand for dispute resolution.

As approximately 98% of cases settle before trial, settlement is clearly the preferred outcome for the vast majority of parties. But, because litigation is an adversary process which drives competition, and not cooperation, may cases don't settle until deep into the litigation process. In such an adversary process, attorneys and litigants do not organically approach a dispute as a joint problem-solving endeavor. In order to not be perceived as weak or desperate, neither side reaches out to begin an early dialogue, and instead spends innumerable resources in hopes of prevailing over its opponent at a trial they will most likely never see.

Those cases that have the propensity to settle early, should, not only for the sake of saving time, money, and angst for the parties involved in those disputes, but also to free up judicial resources for the parties that require or desire trial.

The Solution: Increased use of early dispute resolution would further the highest priority of the State Bar of California: protection of the public, including greater access to the legal system—and that of the California Courts: to provide accessible, efficient, and fair justice—by increasing the availability of the courts and providing timely access to trial. By requiring an early meeting, neither party sacrifices perceived leverage. This would also spur litigants to begin to objectively evaluate their case in the early stages of the dispute, enabling them to make more informed and realistic decisions about their case. This proposed statute is consistent with the meet and confer requirement of Rule 3.724 of the California Rules of Court which provides a duty to meet and confer no later than 30 calendar days before the date set for the initial case management conference. The sound rationale behind the meet and confer requirement of CCP § 2016.040 also supports this proposed legislation. Even if an early conversation doesn't immediately

resolve a case, it can begin a process that will ultimately lead to a solution. This legislation will help alleviate our overburdened court system, availing those much-needed judicial resources for those parties that really need them.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESOLUTION 03-06-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 731.5, to read as follows:

§ 731.5

(a) Whenever any person unlawfully closes any public trail or otherwise interferes with the use of any public trail, any person who uses such trail or would use such trail, and any association, corporation or other entity whose membership as a whole is adversely affected by such closure may bring an action to enjoin such closure.

(b) Any person who unlawfully closes any public trail or otherwise interferes with the use of any public trail shall be liable for damages to the plaintiff in the amount of twenty-five dollars ($25) per day for each day, or portion thereof, that the public trail has been closed or otherwise unlawfully interfered with.

(c) Any person who unlawfully closes any public trail or otherwise interferes with the use of any public trail shall be liable for a civil penalty payable to the governmental agency who holds title to the public trail easement, or is otherwise responsible for maintenance of the public trail interfered with, as follows:

(1) A minimum of one-hundred dollars ($100) per day and not more than five-hundred dollars ($500) per day for any day, or part thereof, the public trail is unlawfully closed or otherwise interfered with, except as provided in subdivision (c)(2);

(2) If the unlawful closure or interference with a public trail occurs at a public trail which passes through land owned by the person found to have unlawfully closed or interfered with the public trail, then the person shall be liable for a civil penalty in the amount of not less than one-quarter of one-percent (0.25%) per day of the fair market value of the person's property or five-hundred dollars per day, whichever is greater.

(d) If the amount of civil penalties assessed under subdivision (c)(2) exceed the fair market value of land owned by the person found to have unlawfully closed or interfered with a public trail passing through land owned by the person, then the court shall order title to said land transferred into the name of the governmental agency who holds title to the public trail easement, or at the election of the governmental agency to a designated non-profit land trust, and the civil penalty shall be limited to the transfer of title.

(e) The prevailing plaintiff ~~party~~ in such action shall be entitled to recover reasonable attorney's fees, in addition to court costs.

(f) As used in this section, a public trail is any trail to which the public in general has a right of access, which right is established pursuant to a recorded document conveying to a political corporation or governmental agency, specifying the nature of such public trail, specifically describing the location thereof, and naming the record owners of the real property over which such trail exists if created by a license, permit or easement. It includes, but is not limited to, pedestrian, equestrian, and boating trails, but does not include any public street, road, or highway.

(g) For purposes of this section, the term "otherwise interferes with" means any action which would cause a reasonable person to believe that they are not on a public trail or are otherwise unlawfully trespassing on private property when using the public trail easement.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: Code of Civil Procedure section 731.5 allows any user of a public trail that is unlawfully closed to public use to sue the person(s) causing the closure for injunctive relief and the prevailing party is entitled to recover attorneys fees. While this section was intended to provide a means to encourage private enforcement to protect against unlawful closure of public trails, it has proven insufficient. It does not address instances where public trail access is interfered with without fully closing the trail, like the posting of no trespassing signs. Likewise, private enforcement has generally been limited to areas, like coastal access, where the public interest is great and there are strong public advocacy groups willing to take on the risks of an adverse attorney fee award. This means that smaller communities who lack financial resources or who lack financially strong public advocacy groups are unwilling sue to maintain public trail easements because of the adverse risks. In addition, the prospects of an adverse attorney fee award under the current statute has proven to be an insufficient deterrent to property owners blocking public trails that pass through their land, particularly when the property owner has substantial financial resources.

The Solution: This resolution amends Code of Civil Procedure section 731.5 to better provide incentives for private enforcement against those who unlawfully block or otherwise interfere with public trail easements and to disincentivize those who might seek to unlawfully block or interfere with public trail easements. It provides an incentive to private enforcement by (1) allowing for nominal damages of $25 per day for each day the trail is unlawfully blocked or interfered with awardable to the plaintiff to compensate for the loss of trail use and (2) by making attorneys fees unilateral to a successful plaintiff. It provides a disincentive to persons who unlawfully block or interfere with public trail easements by additionally providing for civil penalties payable to the governmental agency who holds the trail easement or is responsible for maintenance of the trail. It provides added disincentive to property owners who seek to interfere with a public trail running across their land by tying civil penalty amounts to the fair market value of their property and by providing for the potential loss of their real property. It is intended to address instances like occurred in Los Angeles County (see, e.g., A deer carcass, mountain lions and lawsuits: An ugly battle escalates over a picturesque trail in a celebrity enclave - Los Angeles Times (latimes.com)) or as goes unreported in smaller communities like Dehesa, California, where property owners have locked horse gates serving the California Riding and Hiking Trail, and are alleged to have removed trail markers and posted threatening no trespassing signs in an effort to discourage public use of a recorded public trail easement.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule. This resolution would potentially provide an additional source of revenue for public trail maintenance through the imposition of civil penalties against those who interfere with public trails.

CURRENT OR PRIOR RELATED LEGISLATION
No known prior similar legislation or CCBA resolutions.

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RESPONSIBLE FLOOR DELEGATE: Darin L. Wessel

RESOLUTION 03-07-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 437c, to read as follows:

§ 437c

(a) (1) A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. The motion may be made at any time after 60 days have elapsed since the general appearance in the action or proceeding of each party against whom the motion is directed or at any earlier time after the general appearance that the court, with or without notice and upon good cause shown, may direct.

(2) Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing. If the notice is served by mail, the required 75-day period of notice shall be increased by 5 days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the required 75-day period of notice shall be increased by two court days.

(3) The motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading.

(b)(1) The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court's discretion constitute a sufficient ground for denying the motion.

(2) An opposition to the motion shall be served and filed not less than 14 court days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise. The opposition, where appropriate, shall consist of affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken.

(3) The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed. The statement also shall set forth plainly and concisely any other material facts the opposing party contends are disputed. Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion.

(4) A reply to the opposition shall be served and filed by the moving party not less than five court days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.

(5) Evidentiary objections not made at the hearing shall be deemed waived.

(6) Except for subdivision (c) of Section 1005 relating to the method of service of opposition and reply papers, Sections 1005 and 1013, extending the time within which a right may be exercised or an act may be done, do not apply to this section.

(7) An incorporation by reference of a matter in the court's file shall set forth with specificity the exact matter to which reference is being made and shall not incorporate the entire file.

(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact.

(d) Supporting and opposing affidavits or declarations shall be made by a person on personal knowledge, shall set forth admissible evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavits or declarations. An objection based on the failure to comply with the requirements of this subdivision, if not made at the hearing, shall be deemed waived.

(e) If a party is otherwise entitled to summary judgment pursuant to this section, summary judgment shall not be denied on grounds of credibility or for want of cross-examination of witnesses furnishing affidavits or declarations in support of the summary judgment, except that summary judgment may be denied in the discretion of the court if the only proof of a material fact offered in support of the summary judgment is an affidavit or declaration made by an individual who was the sole witness to that fact; or if a material fact is an individual's state of mind, or lack thereof, and that fact is sought to be established solely by the individual's affirmation thereof.

(f) (1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

(2) A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment. A party shall not move for summary judgment based on issues asserted in a prior motion for summary adjudication and denied by the court unless that party establishes, to the satisfaction of the court, newly discovered facts or circumstances or a change of law supporting the issues reasserted in the summary judgment motion.

(g) Upon the denial of a motion for summary judgment on the ground that there is a triable issue as to one or more material facts, the court shall, by written or oral order, specify one or more material facts raised by the motion that the court has determined there exists a triable controversy. This determination shall specifically refer to the evidence proffered in support of

and in opposition to the motion that indicates that a triable controversy exists. Upon the grant of a motion for summary judgment on the ground that there is no triable issue of material fact, the court shall, by written or oral order, specify the reasons for its determination. The order shall specifically refer to the evidence proffered in support of and, if applicable, in opposition to the motion that indicates no triable issue exists. The court shall also state its reasons for any other determination. The court shall record its determination by court reporter or written order.

(h) If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due.

(i) If, after granting a continuance to allow specified additional discovery, the court determines that the party seeking summary judgment has unreasonably failed to allow the discovery to be conducted, the court shall grant a continuance to permit the discovery to go forward or deny the motion for summary judgment or summary adjudication. This section does not affect or limit the ability of a party to compel discovery under the Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4).

(j) If the court determines at any time that an affidavit was presented in bad faith or solely for the purpose of delay, the court shall order the party who presented the affidavit to pay the other party the amount of the reasonable expenses the filing of the affidavit caused the other party to incur. Sanctions shall not be imposed pursuant to this subdivision except on notice contained in a party's papers or on the court's own noticed motion, and after an opportunity to be heard.

(k) Unless a separate judgment may properly be awarded in the action, a final judgment shall not be entered on a motion for summary judgment before the termination of the action, but the final judgment shall, in addition to any matters determined in the action, award judgment as established by the summary proceeding provided for in this section.

(l) In an action arising out of an injury to the person or to property, if a motion for summary judgment is granted on the basis that the defendant was without fault, no other defendant during trial, over plaintiff's objection, may attempt to attribute fault to, or comment on, the absence or involvement of the defendant who was granted the motion.

(m) (1) A summary judgment entered under this section is an appealable judgment as in other cases. Upon entry of an order pursuant to this section, except the entry of summary judgment, a party may, within 20 days after service upon him or her of a written notice of entry of the order, petition an appropriate reviewing court for a peremptory writ. If the notice is served by mail, the initial period within which to file the petition shall be increased by five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the notice is served by facsimile transmission, express mail, or another method of delivery providing for overnight delivery, the initial period within which to file the petition shall be increased by two court days. The superior court may, for good cause, and before the expiration of the initial period, extend the time for one additional period not to exceed 10 days.

(2) Before a reviewing court affirms an order granting summary judgment or summary adjudication on a ground not relied upon by the trial court, the reviewing court shall afford the parties an opportunity to present their views on the issue by submitting supplemental briefs. The

supplemental briefs may include an argument that additional evidence relating to that ground exists, but the party has not had an adequate opportunity to present the evidence or to conduct discovery on the issue. The court may reverse or remand based upon the supplemental briefs to allow the parties to present additional evidence or to conduct discovery on the issue. If the court fails to allow supplemental briefs, a rehearing shall be ordered upon timely petition of a party.

(n) (1) If a motion for summary adjudication is granted, at the trial of the action, the cause or causes of action within the action, affirmative defense or defenses, claim for damages, or issue or issues of duty as to the motion that has been granted shall be deemed to be established and the action shall proceed as to the cause or causes of action, affirmative defense or defenses, claim for damages, or issue or issues of duty remaining.

(2) In the trial of the action, the fact that a motion for summary adjudication is granted as to one or more causes of action, affirmative defenses, claims for damages, or issues of duty within the action shall not bar any cause of action, affirmative defense, claim for damages, or issue of duty as to which summary adjudication was either not sought or denied.

(3) In the trial of an action, neither a party, a witness, nor the court shall comment to a jury upon the grant or denial of a motion for summary adjudication.

(o) A cause of action has no merit if either of the following exists:

(1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded.

(2) A defendant establishes an affirmative defense to that cause of action.

(p) For purposes of motions for summary judgment and summary adjudication:

(1) A plaintiff or cross-complainant has met his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The defendant or cross-defendant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.

(q) In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review.

(r) This section does not extend the period for trial provided by Section 1170.5.

(s) Subdivisions (a) and (b) do not apply to actions brought pursuant to Chapter 4 (commencing with Section 1159) of Title 3 of Part 3.

(t) Notwithstanding subdivision (f), a party may move for summary adjudication of a legal issue or a claim for damages other than punitive damages that does not completely dispose of a cause of action, affirmative defense, or issue of duty pursuant to this subdivision.

(1) (A) Before filing a motion pursuant to this subdivision, the parties whose claims or defenses are put at issue by the motion shall submit to the court both of the following:

(i) A joint stipulation stating the issue or issues to be adjudicated.

(ii) A declaration from each stipulating party that the motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.

(B) The joint stipulation shall be served on any party to the civil action who is not also a party to the motion.

(2) Within 15 days of receipt of the stipulation and declarations, unless the court has good cause for extending the time, the court shall notify the stipulating parties if the motion may be filed. In making this determination, the court may consider objections by a nonstipulating party made within 10 days of the submission of the stipulation and declarations.

(3) If the court elects not to allow the filing of the motion, the stipulating parties may request, and upon request the court shall conduct, an informal conference with the stipulating parties to permit further evaluation of the proposed stipulation. The stipulating parties shall not file additional papers in support of the motion.

(4) (A) A motion for summary adjudication made pursuant to this subdivision shall contain a statement in the notice of motion that reads substantially similar to the following: "This motion is made pursuant to subdivision (t) of Section 437c of the Code of Civil Procedure. The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement."

(B) The notice of motion shall be signed by counsel for all parties, and by those parties in propria persona, to the motion.

(5) A motion filed pursuant to this subdivision may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.

(u) For purposes of this section, a change in law does not include a later enacted statute without retroactive application.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: Currently replies to motions for summary judgment are due only five calendar days before the hearing. If the hearing is after a long weekend or holiday, such as Thanksgiving, the judge often will not see the reply papers before the hearing. Even where the hearing is on a Tuesday on a regular week, the court will often have very little time to review the reply before the hearing. Thus, more time is needed.

The Solution: Amend the law to require that reply briefs are due 5 court days before the hearing and change the opposition due date to 14 court days before the hearing to give the responding

party sufficient time to reply. The change in the deadlines to file oppositions and replies will lessen the necessity of the courts and the parties to work over the weekends to adequately respond and prepare for a hearing. Although the deadline to file an opposition is a few days earlier, it won't prejudice the nonmoving party because the motions are due 75 days before the hearing.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None.

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RESOLUTION 03-08-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 116.221, to read as follows:

§ 116.221

In addition to the jurisdiction conferred by Section 116.220, the small claims court has jurisdiction in an action brought by a natural person, if the amount of the demand does not exceed ~~ten~~ twenty-five thousand dollars ($~~1~~25,000), except as otherwise prohibited by subdivision (c) of Section 116.220 or subdivision (a) of Section 116.231.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: The small claims limit has not been raised since 2012. From 2005 to 2012, the jurisdictional amount was $7,500.

The Solution: Raise the small claims limit from $10,000 to $25,000 to reflect 13 years worth of inflation

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
SB 71 (2023-2024 Leg. Sess., Umberg)

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RESOLUTION 03-09-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 85, 86, and 86.1, to read as follows:

§ 85

~~An action or special proceeding shall be treated as a limited civil case if all of the following conditions are satisfied, and, n~~ Notwithstanding any law, including but not limited to, a law ~~statute~~ that classifies an action or special proceeding as a limited civil case, an action or special proceeding shall ~~not~~ be treated as a limited civil case ~~unless~~ only if all of the following conditions are satisfied:

(a) The amount in controversy does not exceed ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000). As used in this section, "amount in controversy" means the amount of the demand, or the recovery sought, or the value of the property, or the amount of the lien, that is in controversy in the action, exclusive of attorneys' fees, interest, and costs.

(b) The relief sought is a type that may be granted in a limited civil case.

(c) The relief sought, whether in the complaint, a cross-complaint, or otherwise, is exclusively of a type described in one or more ~~statutes~~ laws that classify an action or special proceeding as a limited civil case or that provide that an action or special proceeding is within the original jurisdiction of the ~~municipal~~ superior court, including, but not limited to, the following provisions:

(1) Section 798.61 or 798.88 of the Civil Code.
(2) Section 1719 of the Civil Code.
(3) Section 3342.5 of the Civil Code.
(4) Section 86.
(5) Section 86.1.
(6) Section 1710.20.
(7) Section 7581 of the Food and Agricultural Code.
(8) Section 12647 of the Food and Agricultural Code.
(9) Section 27601 of the Food and Agricultural Code.
(10) Section 31503 of the Food and Agricultural Code.
(11) Section 31621 of the Food and Agricultural Code.
(12) Section 52514 of the Food and Agricultural Code.
(13) Section 53564 of the Food and Agricultural Code.
(14) Section 53069.4 of the Government Code.
(15) Section 53075.6 of the Government Code.
(16) Section 53075.61 of the Government Code.
(17) Section 5411.5 of the Public Utilities Code.
(18) Section 9872.1 of the Vehicle Code.
(19) Section 10751 of the Vehicle Code.
(20) Section 14607.6 of the Vehicle Code.
(21) Section 40230 of the Vehicle Code.
(22) Section 40256 of the Vehicle Code.

(d) A court may determine for good cause that an action for injunctive relief shall be treated as a limited civil case if the action otherwise satisfies the requirements of subdivision (a).

§ 86

(a) The following civil cases and proceedings are limited civil cases:

(1) A case at law ~~in which~~ if the demand, exclusive of interest, or the value of the property in controversy amounts to ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less. This paragraph does not apply to a case that involves the legality of any tax, impost, assessment, toll, or municipal fine, except an action to enforce payment of delinquent unsecured personal property taxes if the legality of the tax is not contested by the defendant.

(2) An action for dissolution of partnership ~~where~~ if the total assets of the partnership do not exceed ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000); or an action of interpleader ~~where~~ if the amount of money or the value of the property involved does not exceed ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000).

(3) An action to cancel or rescind a contract ~~when~~ if the relief is sought in connection with an action to recover money not exceeding ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or property of a value not exceeding ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000), paid or delivered under, or in consideration of, the contract; an action to revise a contract where the relief is sought in an action upon the contract if the action otherwise is a limited civil case.

(4) A proceeding in forcible entry or forcible or unlawful detainer ~~where~~ if the whole amount of damages claimed is ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less.

(5) An action to enforce and foreclose a lien on personal property ~~where~~ if the amount of the lien is ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less.

(6) An action to enforce and foreclose, or a petition to release, a lien arising under Chapter 4 (commencing with Section 8400) of Title 2 of Part 6 of Division 4 of the Civil Code, or to enforce and foreclose an assessment lien on a common interest development as defined in Section 4100 or 6534 of the Civil Code, ~~where~~ if the amount of the liens is ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less. However, if an action to enforce the lien affects property that is also affected by a similar pending action that is not a limited civil case, or if the total amount of liens sought to be foreclosed against the same property aggregates an amount in excess of ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000), the action is not a limited civil case.

(7) An action for declaratory relief ~~when~~ if brought pursuant to either of the following:

(A) By way of cross-complaint as to a right of indemnity with respect to the relief demanded in the complaint or a cross-complaint in an action or proceeding that is otherwise a limited civil case.

(B) To conduct a trial after a nonbinding fee arbitration between an attorney and client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, ~~where~~ if the amount in controversy is ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less.

(C) A court may determine for good cause that an action for injunctive relief shall be treated as a limited civil case if the action otherwise satisfies the requirements of subdivision (a) of Section 85.

(8) An action to issue a temporary restraining order or preliminary injunction; to take an account, ~~where~~ if necessary to preserve the property or rights of any party to a limited civil case;

to make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; to appoint a receiver pursuant to Section 564 in a limited civil case; to determine title to personal property seized in a limited civil case.

(9) An action under Article 3 (commencing with Section 708.210) of Chapter 6 of Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property or to enforce the liability of the debtor of a judgment debtor where the interest claimed adversely is of a value not exceeding ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or the debt denied does not exceed ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000).

(10) An arbitration-related petition filed pursuant to either of the following:

(A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3, except for uninsured motorist arbitration proceedings in accordance with Section 11580.2 of the Insurance Code, if the petition is filed before the arbitration award becomes final and the matter to be resolved by arbitration is a limited civil case under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed after the arbitration award becomes final and the amount of the award and all other rulings, pronouncements, and decisions made in the award are within paragraphs (1) to (9), inclusive, of subdivision (a).

(B) To confirm, correct, or vacate a fee arbitration award between an attorney and client that is binding or has become binding, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and Professions Code, ~~where~~if the arbitration award is ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less.

(b) The following cases in equity are limited civil cases:

(1) A case to try title to personal property when the amount involved is not more than ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000).

(2) A case when equity is pleaded as a defensive matter in any case that is otherwise a limited civil case.

(3) A case to vacate a judgment or order of the court obtained in a limited civil case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

§86.1

An action brought pursuant to the Long-Term Care, Health, Safety, and Security Act of 1973 (Chapter 2.4 (commencing with Section 1417) of Division 2 of the Health and Safety Code) is a limited civil case if civil penalties are not sought or amount to ~~twenty-five~~ one hundred thousand dollars ($~~25~~100,000) or less.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Women Lawyers Association of Los Angeles

STATEMENT OF REASONS

The Problem: The civil limited jurisdictional amount of $25,000 has not changed since 1986. $25,000 in 1986 is worth about $68,000 in today's dollars. Currently all lawsuits seeking injunctive relief are treated as unlimited civil cases even if the action would otherwise satisfy the requirements for limited civil cases..

The Solution: The civil limited amount in controversy should be raised to $100,000 to reflect the change in the value of the dollar since 1986. Seven years ago, the Commission on the Future of California's Court System recommended increasing the amount to $50,000. Courts have the discretion to designate as limited civil a case seeking injunctive relief fi the action otherwise satisfies the requirements for civil limited actions if good causes exists and the court determines that such a case would benefit from being handled as a limited civil case.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
SB 71 (2023-2024 Reg. Sess., Umberg)

AUTHOR AND/OR PERMANENT CONTACT:
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RESOLUTION 03-10-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure section 2025.290, to read as follows:

§ 2025.290

(a) Except as provided in subdivision (b), or by any court order, including a case management order, a deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to seven hours of total testimony. The court shall allow additional time, beyond any limits imposed by this section, if needed to fairly examine the deponent or if the deponent, another person, or any other circumstance impedes or delays the examination.

(b) This section shall not apply under any of the following circumstances:

(1) If the parties have stipulated that this section will not apply to a specific deposition or to the entire proceeding.

(2) To any deposition of a witness designated as an expert pursuant to Sections 2034.210 to 2034.310, inclusive.

(3) To any case designated as complex by the court pursuant to Rule 3.400 of the California Rules of Court, unless a licensed physician attests in a declaration served on the parties that the deponent suffers from an illness or condition that raises substantial medical doubt of survival of the deponent beyond six months, in which case the deposition examination of the witness by all counsel, other than the witness' counsel of record, shall be limited to two days of no more than seven hours of total testimony each day, or 14 hours of total testimony.

~~(4) To any case brought by an employee or applicant for employment against an employer for acts or omissions arising out of or relating to the employment relationship.~~

~~(5)~~ (4) To any deposition of a person who is designated as the most qualified person to be deposed under Section 2025.230.

~~(6)~~ (5) To any party who appeared in the action after the deposition has concluded, in which case the new party may notice another deposition subject to the requirements of this section.

(c) It is the intent of the Legislature that any exclusions made by this section shall not be construed to create any presumption or any substantive change to existing law relating to the appropriate time limit for depositions falling within the exclusion. Nothing in this section shall be construed to affect the existing right of any party to move for a protective order or the court's discretion to make any order that justice requires to limit a deposition in order to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, oppression, undue burden, or expense.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Darren J. Campbell, Alan J. Crivaro, Richard Jallins, Ryan Dean, Melissa A. Petrofsky, Carrie Fogelson, Elaine Alston, Yvette Patko, Steven Hittleman, Ellie Vilendrer

STATEMENT OF REASONS

The Problem Code of Civil Procedure section 2025.290 codifies California's "seven-hour" rule for depositions in a civil case. Excluded from the "seven-hour" deposition rule are all cases "brought by an employee or applicant for employment against an employer for acts or omissions arising out of or relating to the employment relationship." CAL. CODE CIV. PROC. § 2025.290(b)(4). This amendment would make the "seven-hour" deposition rule applicable to all employment cases. As a threshold matter, this would bring California civil procedure in line with Federal Rule of Civil Procedure 30(d)(1), which limits all depositions to "1 day of 7 hours" unless "otherwise stipulated or ordered by the court." Further, because employment cases are excluded from the "seven-hour" deposition rule under California law, many depositions, which are concluded in "1 day" when the case is venued in federal court, take multiple days when venued in California courts. Not only does this drive up the costs of litigation in terms of hours spent litigating these cases for both the employee and the employer, but due to the shortage of court reporters, there have been significant increases in those costs as well, including delays in moving these cases through the court system.

The Solution: By amending Code of Civil Procedure section 2025.290(b)(4) to bring employment cases within California's "seven-hour" deposition rule, the costs of litigation will be reduced significantly. Moreover, to the extent that a party believes that it needs more than 7 hours to "fairly examine" a witness, Code of Civil Procedure section 2025.290(a) provides for such a mechanism.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None known.

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RESPONSIBLE FLOOR DELEGATE: Darren J. Campbell

RESOLUTION 03-11-2023

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Code of Civil Procedure sections 2030.040 and 2033.040, to read as follows:

§ 2030.040

(a) Subject to the right of the responding party to timely object pursuant to Section 2030.210, or seek a protective order under Section 2030.090, any party who attaches a supporting declaration as described in Section 2030.050 may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(1) The complexity or the quantity of the existing and potential issues in the particular case.

(2) The financial burden on a party entailed in conducting the discovery by oral deposition.

(3) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

(b) If the responding party timely objects, or seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

§ 2033.040

(a) Subject to the right of the responding party to timely object pursuant to Section 2033.210, or seek a protective order under Section 2033.080, any party who attaches a supporting declaration as described in Section 2033.050 may request a greater number of admissions by another party if the greater number is warranted by the complexity or the quantity of the existing and potential issues in the particular case.

(b) If the responding party timely objects, or seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: The Rule of 35, limiting special interrogatories and RFAs to 35 absent special circumstances, was enacted by the Legislature in an attempt to curb discovery excess. In particular, Code Civ. Proc., §§ 2033.040 and 2030.040 were designed to strengthen the rule of 35, shifting the burden of proof regarding the necessity for this excess discovery, to the propounding party and supplying the power of the protective order—a power not available in all

contexts—to the victim party.

But at least one authority, citing to the Rutter Guide, has interpreted these provisions as weakening the Rule of 35, by burdening the victim party with the obligation to move on a protective order at the same time their discovery responses are due, "as opposed to allowing objection and later review on motion to compel" as is the normal process in discovery motion practice. Catanese v. Superior Ct., 46 Cal. App. 4th 1159, 1165 (1996), abrogated on other grounds by Lewis v. Superior Ct., 19 Cal. 4th 1232 (1999). For its part, the Rutter Guide then cites back to Cantanese for the same proposition. See Lee Smalley Edmon & Curtis E.A. Karnow, California Practice Guide: Civil Procedure Before Trial § 956 (Rutter eds. 2023) ("The clear implication is that the responding party cannot simply object to more than 35 interrogatories. Rather, the responding party must seek a protective order."). This citation loop from treatise to case law and back to treatise again is very clever, but undermines the California Legislature's policy objectives of suppressing discovery abuses.

The Solution: The changes in law proposed here give the victim party the option to either move on a protective order or make objections to the discovery in excess of 35, allowing the court to rule on a subsequent motion to compel—as is the usual process in discovery motion practice. This way, the victim party is not burdened with the dual pressures of responding to the legitimate discovery (those requests under 35), while simultaneously meeting and conferring and then drafting and filing a motion for protective order for the discovery in excess of 35, all within the same 30-day time frame. Punishing the victim for the propounding party's excessive discovery demands is contrary to sound policy objectives.

IMPACT STATEMENT
This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION
None.

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