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DEERING'S CALIFORNIA CODES ANNOTATED
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*** This document is current through the 2013 Supplement ***
(All 2012 legislation, 2012 Governor's Reorg. Plan No. 2 and all
propositions approved by the electorate at the June and November 2012 elections)

CODE OF CIVIL PROCEDURE
Part 4. Miscellaneous Provisions
Title 4. Civil Discovery Act
Chapter 2. Scope of Discovery
Article 1. General Provisions

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Cal Code Civ Proc § 2017.020 (2013)

§ 2017.020. When court may limit scope of discovery; Motion for protective order; Monetary sanction

(a) The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. The court may make this determination pursuant to a motion for protective order by a party or other affected person. This motion shall be accompanied by a meet and confer declaration under Section 2016.040.

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

(c)

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

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

NOTES:

Amendments:

2012 Amendment:

Added subd (c).

Historical Derivation:

Former CCP § 2017(c), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 2, Stats 1988 ch 160 § 19, ch 553 § 1 (ch 553 prevails), Stats 2001 ch 812 § 9.4.

Law Revision Commission Comments:**2004**

Subdivision (a) of Section 2017.020 continues the first paragraph of former Section 2017(c) without substantive change.

Subdivision (b) continues the second paragraph of former Section 2017(c) without change, except to conform the cross-reference.

Editor's Notes

For notes of decisions derived from cases decided under former CCP § 2017, see *CCP § 2017.010*.

Collateral References:

Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 2 "Procedural Guide For Civil Actions".

Cal. Points & Authorities (Matthew Bender(R)) ch 80 "Discovery: Scope Regulation And Timing" § 80.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.46.

Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.80.

Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.50.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.11.

Cal. Points & Authorities (Matthew Bender(R)) ch 87 "Discovery: Physical And Mental Examinations" § 87.21.

Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.13.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 5.19.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 7.11.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 7.15.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 8.03.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 8.06-8.07.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 8.21.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 10.12.

Matthew Bender(R) Practice Guide: *California E-Discovery and Evidence*, 11.05.

Hierarchy Notes:

Pt. 4, Tit. 4 Note

Emerging Issues Analysis

2012 Changes to the California Electronic Discovery Act

California's 2012 "clean up" legislation expands and clarifies application of the Electronic Discovery Act and specifically extends the application of numerous sections of the Civil Discovery Act to electronically stored information ("ESI"). This commentary addresses changes affecting the general provisions of the Civil Discovery Act, subpoenas, ESI that is not reasonably accessible, sanctions, and inadvertent production of privileged ESI.

NOTES OF DECISIONS 1. Generally

1. Generally

Trial court erred in approving a class action settlement agreement where it was unclear whether it was provided with sufficient information to assure itself that terms of the agreement were fair, adequate, and reasonable because an informed evaluation could not be made without an understanding of the amount that was in controversy and the realistic range of outcomes of the litigation; although it was possible that the data necessary to make such an evaluation was given to trial court during informal discussions with counsel, no such information appeared in the record, and thus trial court needed to redetermine whether the proposed settlement was fair, adequate, and reasonable following the opportunity for limited discovery. *Kullar v. Foot Locker Retail, Inc.* (2008, 1st Dist) 168 Cal App 4th 116, 2008 Cal App LEXIS 1740.

Trial court need not grant all discovery requests that an objector to a class action settlement sees fit to make, and requests that seek particular materials that are properly within the scope of *Ev C § 1119* should be denied; where settling parties provide essentially no information to explain or substantiate their evaluation of the magnitude or potential merit of the claims being settled, the objectors should not be denied access to data that reasonably may be expected to shed light on these issues. *Kullar v. Foot Locker Retail, Inc.* (2008, 1st Dist) 168 Cal App 4th 116, 2008 Cal App LEXIS 1740.

Federal Railroad Labor Act does not preempt California's Civil Discovery Act during the pendency of a Federal Employers' Liability Act, 45 USCS § 51 et seq., action where the discovery provisions provide an adequate means of obtaining medical information and employer's use of extra-judicial discovery is merely a pretext to gain an unfair advantage in the underlying action. *Pratt v. Union Pacific Railroad Co.* (2008, 3d Dist) 168 Cal App 4th 165, 85 Cal

Rptr 3d 321, 2008 Cal App LEXIS 2027.

In employee's suit against his railroad company employer under the Federal Employers' Liability Act, 45 USCS § 51 et seq., and the federal Locomotive Inspection Act, 49 USCS § 20701 et seq., for personal injuries suffered at work, the federal Railroad Labor Act did not preempt trial court's authority to prohibit employer from compelling employee to attend a medical examination or conducting a disciplinary hearing to terminate employee's employment for refusing to provide employer with medical evidence justifying his continued absence from work because California's Civil Discovery Act granted employee an independent right to protective relief that could be resolved without considering the terms of employer's collective bargaining agreement; disciplinary hearing was nothing but a pretext to obtain an unfair advantage in the action by circumventing the rules of discovery and interfering with employee's right to counsel. *Pratt v. Union Pacific Railroad Co. (2008, 3d Dist) 168 Cal App 4th 165, 85 Cal Rptr 3d 321, 2008 Cal App LEXIS 2027.*