

**A PROPOSAL TO IMPLEMENT A COST-EFFECTIVE AND
EFFICIENT PROCEDURAL TOOL INTO FEDERAL LITIGATION PRACTICE**

I. Survey Numbers: One View of the Empirical Evidence.

A. The ABA Litigation Section Survey

The litigation section has approximately 55,000 members. 31,000 received the survey; 3267 members returned it. Of those who represented defendants, 73.5% practice in firms with 20 or more lawyers. In sharp contrast, those members who represent plaintiffs practice in small firms: 68.9% practice in firms with 20 or less lawyers.

So, for example, when 63% of the respondents say that the Rules meet Rule 1's objective, this amounts to 2058 responders or 3% of the Litigation Section. The 37% that disagree amount to 2% of the Section.

B. The FJC Survey

The FJC sent surveys to 5685 lawyers in 3550 cases, and received a significant response with 2371 respondents. Of the 1183 plaintiff's lawyers, small firms again predominated with 84.5% ranging from solo practice to firms with 11 lawyers or less. Another 7.7% practiced in firms with less than 26 lawyers. Of the 1188 lawyers representing defendants, however, only 17.9% practiced in firms with less than 11 lawyers and another 15.7% worked in firms with less than 26 lawyers. A full two thirds of the responding defendants practiced in firms employing more than 25 lawyers.

C. The American College of Trial Lawyers Survey

The College sent surveys to 3812 total members. It received 1494 responses but did not count 112 of them because they were from lawyers not in practice. Thus, there were 1382 counted responses. 24% of the responders, or 332 lawyers, represented

plaintiffs. 31%, or 428 lawyers, represented defendants. The remaining 44%, another 608 lawyers, primarily represented defendants.

D. The National Employment Lawyers Association Survey

To be a member of the National Employment Lawyers Association, a lawyer must certify that he or she represents employees in more than 50% of the practice. Most NELA members represent employees in a much greater proportion. Many NELA members also practice in other areas of law.

296 NELA members responded to the survey, approximately the same percentage of total recipients as responded to the ABA survey. 96.2% of these respondents practice in firms with less than 26 lawyers; of those, 89.1% practice in firms with less than 11 lawyers.

II. Even with Small Survey Numbers, Some Consensus Emerges.

It is probably unrealistic to expect that large percentages of survey recipients will return surveys. Nonetheless, when recipients from four different constituent groups do take the time to respond, and when the responses show some elements of consensus, it should be fair to assume that most non-responders would not have markedly different views. In the remainder of this paper, I propose to highlight some areas of consensus, followed by a suggestion that I believe is practical and achievable.

A. E-Discovery Is Important; It Is Not Generally a Problem.

It cannot be denied that electronically stored information comprises important documentary evidence in almost every commercial and employment case. Overall, the ABA survey showed that 70% of its respondents agreed that ESI discovery increased the party's ability to discover all relevant evidence.

Counter-intuitively, but in real life (based on the FJC results), if discovery took place in the case at all, electronic discovery was requested in only 30%-40% of those cases where there was a discovery plan. There was a discovery plan in 80% of the cases. This means that 30-40% of the 80% of cases with discovery plans had any ESI component. That amounts to only 24%-32% of the total. Of these, problems with ESI discovery were reported in 25% of the cases, which is only 6%-8% of the total caseload.

These numbers do not confirm that electronic discovery is a problem that requires a Rules change.

The point of view of the employment plaintiff's Bar was very well expressed by the following NELA survey comment:

“Electronic documents are more easily searched, sorted, copied and stored than paper documents. The main difference is that there are more written communications with e-mail than with paper. It would be inexpensive to simply allow the other party (or other party's expert) access to e-mails or databases. The producing party often erroneously inflates the claimed cost of production because they desire to review the material -- this is their right but it is not a true cost. For example, in a class action promotion case, the defendant had data tapes showing ALL personnel transactions (hires, promotions, bonuses, etc.) for the 10-year period. Defendants submitted a motion claiming it would cost in excess of \$50,000 and thousands of hours to review it for production. There was no claim that any privileged material was in the data -- it was simply a computerized version of "personnel action forms." Our expert determined that all of the tapes could be copied in less than 3 hours, and that his firm could create a search for the relevant transactions (promotions fitting certain criteria) in a few hours.”

Of course, the very large complex cases deserve a different form of attention from the courts, but they do not deserve a Rules change. As I have argued in my submission responding to Greg Joseph's paper, these cases deserve special master consideration.

B. Problems That Exist Can Be Minimized By Cooperation, Pattern
Discovery And Early Judicial Involvement.

The surveys generally show that litigation problems are less likely to occur if two things happen at the beginning of the case. The first is early judicial involvement:

- “[E]arly case management by judges helps to narrow the issues and limit discovery” (ABA survey);
- “[J]udges should resolve discovery issues early in cases and do so without requiring the submission of motions on discovery” (NELA survey);
- [J]udges should have a more active role in the beginning of the case in designing the scope of discovery and the direction and timing of the case all the way to trial” (ACTL survey).

The second is to insure that judicial involvement encourages cooperation between the lawyers:

- “When all lawyers are collaborative and professional, the case costs less for clients” (ABA survey); “
- ”A generation of lawyers has practiced under the assumption, mostly wrong, that it is a professional duty to defend information against discovery, and that cooperation in the discovery process is tantamount to malpractice” (Cabraser paper).

There is also a strong consensus that Rule 26 (a) (1) has been ineffective. There appears to be minimal motion practice to enforce the present provisions, maybe driven by the strong feeling that enforcement is not a judicial priority:

- “Initial disclosure is not a cost-effective measure...” (ABA survey).
- “Strictly enforce rule 26 (a) initial disclosures. Most seem to take this as a joke

when it could save so much time and money” (NELA survey).

- “Only 34% ... said that the current initial disclosure rules reduce discovery and only 28% said they save the clients money. The initial-disclosure rules need to be revised” (ACTL survey).

As noted, there is a substantial custom and practice to disregard this particular Rules provision, in many sections of the country. I submit that there is a better way to reach the goals which the Rule had in mind but has not accomplished.

C. A Proposed Better Way To Deal With Initial Disclosures

The better way is to adopt, in categories of cases which routinely appear in the federal courts, model (or pattern) interrogatories, model (or pattern) requests to produce documents and a model (or pattern) protective order.

- “Utilize standard interrogatories and requests to produce to which no objection can be made as the first round of discovery.”
- “Mandate the production of certain types of documents for certain types of cases.”
- “Mandatory initial discovery disclosure obligations with real teeth for those violating the rules.”
- “Judicially-approved pattern discovery.”
- “Have form interrogatories and form document requests that can almost never be subject to objection.”
- “Create pattern discovery requests approved for particular subject matters to reduce objections and pleadings.”

The above were all independently suggested by lawyers representing employees in employment matters, in the NELA survey. Many more echoed the same theme in different words. Because my practice also is in employment litigation, and because I represent employees, I have attached a suggested set of such interrogatories, with requests to produce as well as a protective order. (Attachment A) Also, because the State of California has adopted pattern interrogatories in employment cases, I have attached a copy of them as well. (Attachment B)

The new procedure I suggest would work as follows: pattern interrogatories and requests to produce would be served with the Complaint. By Rule (local or national, but preferably uniformly local) this pattern discovery would not be subject to objection, such that answers to interrogatories and production of documents would be required within a specified time after the Complaint is filed. Once the defendant(s) received the Complaint, it could issue its own approved pattern discovery to the plaintiff. This discovery would functionally replace the 26 (a) (1) requirements in each case where it was used. The trial judge to whom the case is assigned would immediately issue the pattern protective order so that confidential documents could be produced without delay. Once responses have been made, the parties would follow the present Rule 26 (f) process.

I submit that this process would also substantially improve a Rule 16 (a) conference, as well. First, a plaintiff with a Complaint which might otherwise have been subject to a Motion to Dismiss should now be able to amend the Complaint if there truly is evidence to support the allegations. If the plaintiff still did not have sufficient evidence, he or she should be prepared to suggest particularized and limited further discovery which would, if successful, avoid dismissal. If the plaintiff could not do so or otherwise believes that the Complaint (either as initially filed or as amended) should not

be dismissed, defendant could file its Motion and the court would decide it. In reality, however, this process should result in far fewer Motions to Dismiss, as well as a public perception of a much fairer process at this early stage of the litigation.

The other benefit of early pattern discovery is that it should make the 16 (a) conference more realistic. The trial judge will have the benefit of assessing what early discovery has produced, which should lead to a more informed case management order. The parties, having had the benefit of early discovery, should be able to act more cooperatively. And, perhaps just as important as anything else, the parties may be in a realistic position to explore settlement.

There will probably be some protest that a party being sued should not be put in the position of incurring any discovery expense if the case would not have enough merit to survive a Motion to Dismiss. While I concede that this argument has some appeal, and deserves discussion, there is fundamental fairness in allowing pattern discovery first. At least in the employment context, where terminated employees are prohibited from keeping company documentation upon termination and counsel generally does not have access to other company employees due to ethical constraints, there is a substantial undercurrent of unfairness when a claim is dismissed and no discovery has been allowed. The balance of hardships, in my opinion, tilts markedly toward early discovery.

D. This Procedure Would Address Many Well-Justified Concerns.

The Foxley Cattle Co. court, cited by Elizabeth Cabraser, expressed concerns that the “escalating cost of civil litigation runs the grave risk of placing redress in the federal courts beyond the reach of all but the most affluent.” The cost of discovery is, in today’s litigation, the most substantial of all costs in most cases.

But, as Judge Higginbotham states in his paper analyzing *The Present Plight of the District Courts*: “[A]ccess to discovery, and a lot of it, is often a necessity in suits by private attorneys-general, this in a country so dependent on the supporting enforcement of federal normative standards by ‘private’ suits. Recent events have laid bare the consequences of under-enforcement of federal regulatory schemes. It seems odd now to impede their efficacy.... Perhaps we could move toward an initial opening to limited discovery followed by a look at likely merit for greater or full access. Regardless, access presents itself as the only effective control.”

On the other side of the fence, there is also legitimate concern about excessive discovery requests. As Girard & Espinosa recognize: “[T]o be sure, the problems often begin with overbroad, poorly crafted ‘kitchen sink’ document requests served by the requesting party.” Ms. Cabraser correctly notes, on the other hand: “Many plaintiffs’ advocates will not support or implement discovery reforms that set additional limits on the quantum of data, the number of depositions, or the time allowed within which to complete discovery, if they do not perceive that judges are serious about punishing the withholding, hiding, or destruction of material information that such limitations can allow.”

Much of this discussion has devolved to the present *au courant* phrase that litigation must have some “proportionality.” In fact, the ACTL-IALLS proposal suggests: “Proportionality should be the most important principle applied to all discovery.” They say: “Courts should be encouraged to stage discovery to ensure that discovery related to potentially dispositive issues is taken first so that those issues can be isolated and timely adjudicated.”

Judge Baylson, in his response to one of Judge Higginbotham's papers, suggests a discovery fence: "periodic Rule 16 and Rule 26 conferences allow the judge to expand or contract discovery (particularly ESI) sought by one side or the other as unnecessary given the complexities/value of the case, i.e., the concept of proportionality.... Central to the active case management model of discovery is that discovery need not be perfect for a trial to be fair. Most Rule 34 requests start out with the word 'all.'...[He suggests a 'Brady' rule for civil cases] - ... imposing an ethical requirement on lawyers and a behavioral requirement on parties to disclose any 'smoking guns' or other materially unfavorable evidence, whether or not requested by the opposing party.'"

I respectfully submit that the adoption of pattern discovery with a pattern protective order will help address many of these substantive issues. I concur that the "Brady rule" should be the ethical standard for responses to pattern discovery. Most importantly, however, pattern discovery which is enforced will require both parties, before costly motion practice, to look carefully at the merits of the case or defense. It will enable a trial judge to have more than a knee-jerk reaction to a Complaint that may have sketchy pleadings, because pattern and early discovery may allow that Complaint to be amended to provide fair game for litigation. It will also enable a trial judge to make a better evaluation of what "proportionality" means for the particular case, so that the judge can limit or expand the scope of future discovery in a way that is fair to the litigants. It responds to what Judge Higginbotham suggested as an "initial opening to limited discovery," at the same time responding to the ACTL-IALLS suggestion that courts should stage discovery. It insures that the initial round of discovery will not be the "kitchen sink" variety, for either side.

E. What Can Be Done.

If the Advisory Committee believes that this idea should be explored, I suggest that it appoint a task force to move forward on it. Perhaps the task force should work with subcommittees, arranged by substantial practice areas in the federal courts. Employment law is one substantial practice area. Using it as an example, appointing two or three judges with four or five lawyers representing each side should be sufficient. Such a committee should be in a position to suggest pattern discovery as well as a pattern protective order, and how to implement them, within three months of the appointment.

A project of this nature should be well-suited for pilot program experimentation.

ATTACHMENT: A

MODEL INTERROGATORIES

Pursuant to Rules 13-6, *et seq.* and 13-9, *et. seq.*, of the Connecticut Rules of Practice, the plaintiff, _____, hereby requests that the defendant, _____, answer under oath the following interrogatories within thirty days hereof and produce legible copies of all requested documents in the defendant's possession, custody or control for inspection and/or copying at the office of the undersigned counsel within thirty (30) days of the date hereof.

INTERROGATORIES (INSTRUCTIONS AND DEFINITIONS)

In answering these interrogatories, furnish all information available to the defendant including information in the possession of its attorneys, investigators and all persons acting on its behalf. If you cannot answer the interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portions.

If the defendant refuses to answer and/or objects to any interrogatory or production request in whole or in part, describe the basis for the refusal or objection in detail sufficient to permit the Court to adjudicate the validity of such refusal or objection.

If more space is required for answers than is provided, please attach additional sheets of paper and designate thereupon which interrogatory is being answered.

The interrogatories which follow are to be considered as continuing, and you are requested to provide, by way of supplementary answers thereto, such additional information as you or any persons acting on your behalf may hereafter obtain which will augment, clarify, or otherwise modify the answers now given to these interrogatories. Such supplementary responses

are to be filed and served upon counsel for the defendant within twenty (20) days after the defendant knows, or should know, of such information.

As used herein, the following terms shall have the meanings indicated below:

- a. "Person" means natural persons, agencies, unions, associations, federations, or any other kind of entity.
- b. When used in connection with any corporation, the word "personnel" means all employees, officers and directors of the corporation.
- c. "Document" or "records" means any printed, typewritten, handwritten, electronically or otherwise recorded matter of whatever character, including, but without limitation, files, correspondence, e-mails, contracts, logs, minutes of meetings, agreements, letters, purchase orders, memoranda, telegrams, notes, forms, catalogues, brochures, manuals, diaries, reports, calendars, interoffice communications, instructions, statements, jottings, announcements, photographs, tape recordings, motion pictures and any carbon or photographic copies of any such material if the defendant does not have custody of the original.
- d. "Identify" means, with respect to a natural person (1) his or her name; (2) his or her last known home address and telephone number; (3) his or her job title; (4) his or her business address and telephone number; (5) the name and address of his or her employer; and (6) his or her relationship, if any, to the plaintiff.
- e. "Identify" means, with respect to an agency, association or other entity (1) the legal name under which such entity is established; 2) the full business address and telephone number of such entity; and (3) the officers of such entity.
- f. "Identify" means, with respect to documents, (1) the author thereof and the person or persons to whom the document(s) was/were originally directed; (2) the source from whom

defendant obtained such document(s); (3) the date of such document(s); (4) the current custodian of such document(s); (5) the location at which the document(s) is/are situated; and (6) the subject matter of such document(s).

g. "The defendant" or " " means the defendant .

1. Please identify the person(s) answering these interrogatories. If more than one person is answering the interrogatories, please identify each person by the corresponding interrogatory number.

2. Please identify all persons involved in the plaintiff's [adverse action] that have knowledge of the reasons why the [adverse action] occurred.

3. Please state all of the reasons for the plaintiff's [adverse action], and for each reason indicate whether plaintiff was given any prior warning, the date of such warning, whether it was in writing or oral, identify any witnesses to the conduct for which plaintiff was warned and identify the individual who gave the warning.

4. In the three years before the plaintiff's [adverse action], for any type of alleged misconduct, indicate each incident of misconduct, and for each such incident whether the plaintiff was given any warning, the date of such warning, whether it was in writing or oral, identify any witness to the conduct for which plaintiff was warned and identify the individual who gave the warning

5. Describe the procedures defendant followed with respect to the plaintiff's [adverse action] including whether the decision was reached by one or more individuals (and if so, who); whether the decision was reviewed by one or more individuals or groups of individuals (and if

so, who); whether the decision was reviewed at the time of or before by legal counsel (and if so, who).

6. Please identify, by giving name, job title/capacity, address and telephone number, each individual whom defendant, any related entity, and/or any of its employees, agents or representatives has interviewed concerning the allegations in plaintiff's Complaint.

7. Please identify, by giving name, job title/capacity, address and telephone number, each individual from whom defendant, any related entity, and/or any of its employees, agents or representatives has obtained a written or recorded statement concerning the allegations in plaintiff's Complaint.

8. If some other person(s) [has taken over job functions] following plaintiff's [adverse action], identify the person(s), the date the person(s) was first notified that he/she would [do those functions], the employee(s) salary and other elements of compensation, and any changes in the job description or duties of the employee(s) when compared to the position formerly held by the plaintiff.

9. Is or was there in effect any policy of insurance through which the defendant and/or any related entity, was or might be insured in any manner for the damages, claims or actions asserted by plaintiff in the Complaint filed in this action? If yes, please identify the insurer, the policy and state the limits of coverage.

10. With reference to each person the defendant expects to call as an expert witness at trial, please identify each expert, indicate the subject on which each expert is expected to testify, the substance of all facts and opinions to which such expert is expected to testify, and a summary

of the grounds for each such opinion of each expert.

MODEL REQUESTS TO PRODUCE

REQUESTS TO PRODUCE (INSTRUCTIONS)

If the defendant refuses to answer and/or objects to any production request in whole or in part, describe the basis for the refusal or objection in detail sufficient to permit the Court to adjudicate the validity of such refusal or objection.

Where exact information cannot be furnished, estimated information should be supplied to the extent possible. Where estimation is used, the same should be so indicated, and an explanation given as to the basis upon which the estimate was made.

Each document produced must be labeled to indicate to which request for production it is responsive.

If a document responsive to any request has been lost, mutilated or destroyed, so state and identify such document, and state to which request(s) the document would have been responsive.

If there are no documents in the defendant's custody or control with respect to a particular request for production, so state.

If any document falling within the scope of any request for production is withheld under a claim of privilege, so state and identify such document, state to which request(s) it would have been responsive, and include information as to the date of the document, the name of the person or entity who drafted or authorized it, its title, the person or entity to whom it was addressed, sent or delivered, and state the ground(s) on which such document is considered to be privileged from production.

"Document" or "record" means any printed, typewritten, handwritten, electronically or otherwise recorded matter of whatever character, including, but without limitation, files,

correspondence, emails, contracts, logs, minutes of meetings, agreements, letters, purchase orders, memoranda, telegrams, notes, forms, catalogues, brochures, manuals, diaries, reports, calendars, interoffice communications, instructions, statements, jottings, announcements, depositions, affidavits, negotiable instruments, photographs, tape recordings, motion pictures, e-mails and any carbon or photographic copies of any such material if defendant does not have custody of the original.

“Electronic Communications” means information in an electronic format, including correspondence, memoranda, notes, ledgers, work papers, e-mails, calendars, voice mail messages and saved instant messages, as well as drafts of such materials.

1. All company documents, including those portions of handbooks, policy manuals or company rules and regulations setting forth policies or guidelines [relevant to the adverse action] in effect during [the relevant time period].

2. Plaintiff's full personnel file and the full contents of any other file relating to claimant's job performance, whether kept in the human resources department, the corporate office or kept by a supervisor.

3. Any and all job descriptions of the plaintiff's positions with defendant from [the relevant date] through his last date of employment.

4. The plaintiff's complete compensation records, including W-2 and/or 1099 forms for each full or partial year of plaintiff's employment, from [the relevant date] through his last date of employment.

5. All evaluative documents pertaining to the plaintiff's work performance, including but not limited to evaluations, self-evaluations, reviews for any purpose, including all documents concerning commendations, praise or criticism.

6. All documents describing the value of defendant's fringe benefits for each full or partial year of claimant's employment from [the relevant date] through Plaintiff's last date of employment, including documents describing any premiums paid by defendant on behalf of plaintiff for any insurance coverage offered.

7. All documents describing defendant's performance review policy, or any other policy intended in whole or in part to improve employee performance, from [the relevant date] through the last date of plaintiff's employment.

8. All documents, including electronic communications, concerning plaintiff's proposed or actual [adverse action] including notes, e-mails, texts, other correspondence or memos concerning meetings of company employees and/or supervisors relating in any way to the decision to [adverse affect] plaintiff's employment.

9. All documents, including electronic communications, reflecting, related to or utilized in connection with the decision to [adversely affect] the plaintiff.

10. All documents, including electronic communications, pertaining to recommendations for the [adverse affect].

11. All documents, including electronic communications, relating to any claims that plaintiff performed poorly or below average in any aspects of his employment, including any investigations of alleged poor or below average performance.

12. All documents, including electronic communications, written statements, interview notes, correspondence of any nature, recordings or reports of any investigations of complaints made by any employee or non-employee against plaintiff, from [relevant date] through the date of [adverse action].

13. All documents provided by anyone to corporate offices of the defendant relating to or recommending plaintiff's [adverse affect].

14. All documents, including electronic communications, from any person participating in any investigation of any complaint made by the plaintiff [in the relevant time period].

MODEL PROTECTIVE ORDER

It is hereby ordered by the Court that the following restrictions and procedures shall apply to certain information, documents and excerpts from documents supplied by the parties to each other in response to discovery requests:

1. Counsel for any party may designate any document or information contained in a document as confidential if counsel determines, in good faith, that such designation is necessary to protect the interests of the client. Information and documents designated by a party as confidential will be labeled "CONFIDENTIAL -- PRODUCED PURSUANT TO PROTECTIVE ORDER." "Confidential" information or documents may be referred to collectively as "confidential information."

2. Unless ordered by the Court, or otherwise provided for herein, the confidential information disclosed will be held and used by the person receiving such information solely for use in connection with the above-captioned action.

3. In the event a party challenges another party's confidential designation, counsel shall make a good faith effort to resolve the dispute in accordance with Rule 9 (d) of the Local Rules of the District Court for the District of Connecticut, and in the absence of a resolution, the challenging party may thereafter seek resolution by the Court. Nothing in this Protective Order constitutes an admission by any party that confidential information disclosed in this case is relevant or admissible. Each party specifically reserves the right to object to the use or admissibility of all confidential information disclosed, in accordance with applicable law and Court rules.

4. Information or documents designated as "Confidential" shall not be disclosed to any person, except:

- a. The requesting party and counsel, which as to defendant means outside counsel;
- b. Employees of such counsel assigned to and necessary to assist in the litigation;
- c. Consultants or experts to the extent deemed necessary by counsel;
- d. Any person from whom testimony is taken or is to be taken in these actions, except that such a person may only be shown that confidential information during and in preparation for his/her testimony and may not retain the confidential information; and
- e. The Court or the jury at trial or as exhibits to motions.

5. Prior to disclosing or displaying the confidential information to any person, counsel shall:

- (1) inform the person of the confidential nature of the information or documents;

and

- (2) inform the person that this Court has enjoined the use of the information or documents by him/her for any purpose other than this litigation and has enjoined the disclosure of that information or documents to any other person.

6. The confidential information may be displayed to and discussed with the persons identified in Paragraph 4 (c) and (d) only on the condition that prior to any such display or discussion, each such person shall be asked to sign an agreement to be bound by this Order in the form attached as Exhibit A. In the event such person refuses to sign an agreement in the form attached as Exhibit A, the party desiring to disclose the confidential information may seek appropriate relief from the Court.

7. For the purpose of Paragraphs 4 (d) and (e) it is understood by the parties that any documents which become part of an official judicial proceeding or which are filed

with the Court are public documents, and that such documents can and will be sealed by the Court only upon motion and in accordance with applicable law, including Rule 7 (f) of the Local Rules for this Court. This Protective Order does not provide for the automatic sealing of such documents.

8. At the conclusion of litigation, the confidential information and any copies thereof shall be promptly (and in no event later than thirty (30) days after entry of final judgment no longer subject to further appeal) returned to the producing party or certified as destroyed.

9. The foregoing is entirely without prejudice to the right of any party to apply to the Court for any further Protective Order relating to confidential information; or to object to the production of documents or information; or to apply to Court for an order compelling production of documents or information; or for modification of this Order.

EXHIBIT A

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled _____
_____ have been designated as confidential. I have been informed that any such documents or information labeled "CONFIDENTIAL -- PRODUCED PURSUANT TO PROTECTIVE ORDER" are confidential by Order of the Court.

I hereby agree that I will not disclose any information contained in such documents to any other person. I further agree not to use any such information for any purpose other than this litigation.

Signed in the presence of:

DATED: _____

(Attorney)

ATTACHMENT: B

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	
TELEPHONE NO.:	FAX NO. (Optional):
E-MAIL ADDRESS (Optional):	
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE:	
<p style="text-align: center;">FORM INTERROGATORIES – EMPLOYMENT LAW</p> <p>Asking Party:</p> <p>Answering Party:</p> <p>Set No.:</p>	CASE NUMBER:

Sec. 1. Instructions to All Parties

- (a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in employment cases.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party’s right to assert any privilege or make any objection.

Sec. 2. Instructions to the Asking Party

- (a) These form interrogatories are designed for optional use by parties in employment cases. (Separate sets of interrogatories, *Form Interrogatories—General* (form DISC-001) and *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004) may also be used where applicable in employment cases.)
- (b) Insert the names of the **EMPLOYEE** and **EMPLOYER** to whom these interrogatories apply in the definitions in sections 4(d) and (e) below.
- (c) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.
- (d) The interrogatories in section 211.0, Loss of Income Interrogatories to Employer, should not be used until the employer has had a reasonable opportunity to conduct an investigation or discovery of the employee’s injuries and damages.
- (e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

- (a) You must answer or provide another appropriate response to each interrogatory that has been checked below.
- (b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.

- (c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.
- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.
- (f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

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

(DATE)

(SIGNATURE)

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

- (a) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

- (b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.
- (c) **EMPLOYMENT** means a relationship in which an **EMPLOYEE** provides services requested by or on behalf of an **EMPLOYER**, other than an independent contractor relationship.
- (d) **EMPLOYEE** means a **PERSON** who provides services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYEE** refers to *(insert name)*:

(If no name is inserted, EMPLOYEE means all such PERSONS.)
- (e) **EMPLOYER** means a **PERSON** who employs an **EMPLOYEE** to provide services in an **EMPLOYMENT** relationship and who is a party to this lawsuit. For purposes of these interrogatories, **EMPLOYER** refers to *(insert name)*:

(If no name is inserted, EMPLOYER means all such PERSONS.)
- (f) **ADVERSE EMPLOYMENT ACTION** means any **TERMINATION**, suspension, demotion, reprimand, loss of pay, failure or refusal to hire, failure or refusal to promote, or other action or failure to act that adversely affects the **EMPLOYEE'S** rights or interests and which is alleged in the **PLEADINGS**.
- (g) **TERMINATION** means the actual or constructive termination of employment and includes a discharge, firing, layoff, resignation, or completion of the term of the employment agreement.
- (h) **PUBLISH** means to communicate orally or in writing to anyone other than the plaintiff. This includes communications by one of the defendant's employees to others. *(Kelly v. General Telephone Co. (1982) 136 Cal.App.3d 278, 284.)*
- (i) **PLEADINGS** means the original or most recent amended version of any complaint, answer, cross-complaint, or answer to cross-complaint.
- (j) **BENEFIT** means any benefit from an **EMPLOYER**, including an "employee welfare benefit plan" or employee pension benefit plan" within the meaning of Title 29 United States Code section 1002(1) or (2) or ERISA.
- (k) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).
- (l) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.
- (m) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

The following interrogatories for employment law cases have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

- 200.0 Contract Formation
- 201.0 Adverse Employment Action
- 202.0 Discrimination Interrogatories to Employee
- 203.0 Harassment Interrogatories to Employee
- 204.0 Disability Discrimination
- 205.0 Discharge in Violation of Public Policy
- 206.0 Defamation
- 207.0 Internal Complaints
- 208.0 Governmental Complaints
- 209.0 Other Employment Claims by Employee or Against Employer
- 210.0 Loss of income Interrogatories to Employee
- 211.0 Loss of income Interrogatories to Employer
- 212.0 Physical, Mental, or Emotional Injuries—Interrogatories to Employee
- 213.0 Other Damages Interrogatories to Employee
- 214.0 Insurance
- 215.0 Investigation
- 216.0 Denials and Special or Affirmative Defenses
- 217.0 Response to Request for Admissions

200.0 Contract Formation

- 200.1 Do you contend that the **EMPLOYMENT** relationship was at "at will"? If so:
 - (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.
- 200.2 Do you contend that the **EMPLOYMENT** relationship was not "at will"? If so:
 - (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.
- 200.3 Do you contend that the **EMPLOYMENT** relationship was governed by any agreement—written, oral, or implied? If so:
 - (a) state all facts upon which you base this contention;
 - (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of those facts; and
 - (c) identify all **DOCUMENTS** that support your contention.

- 200.4 Was any part of the parties' **EMPLOYMENT** relationship governed in whole or in part by any written rules, guidelines, policies, or procedures established by the **EMPLOYER**? If so, for each **DOCUMENT** containing the written rules, guidelines, policies, or procedures:
- state the date and title of the **DOCUMENT** and a general description of its contents;
 - state the manner in which the **DOCUMENT** was communicated to employees; and
 - state the manner, if any, in which employees acknowledged either receipt of the **DOCUMENT** or knowledge of its contents.

- 200.5 Was any part of the parties' **EMPLOYMENT** relationship covered by one or more collective bargaining agreements or memorandums of understanding between the **EMPLOYER** (or an association of employers) and any labor union or employee association? If so, for each collective bargaining agreement or memorandum of understanding, state:
- the names and **ADDRESSES** of the parties to the collective bargaining agreement or memorandum of understanding;
 - the beginning and ending dates, if applicable, of the collective bargaining agreement or memorandum of understanding; and
 - which parts of the collective bargaining agreement or memorandum of understanding, if any, govern (1) any dispute or claim referred to in the **PLEADINGS** and (2) the rules or procedures for resolving any dispute or claim referred to in the **PLEADINGS**.

- 200.6 Do you contend that the **EMPLOYEE** and the **EMPLOYER** were in a business relationship other than an **EMPLOYMENT** relationship? If so, for each relationship:
- state the names of the parties to the relationship;
 - identify the relationship; and
 - state all facts upon which you base your contention that the parties were in a relationship other than an **EMPLOYMENT** relationship.

201.0 Adverse Employment Action

- 201.1 Was the **EMPLOYEE** involved in a **TERMINATION**? If so:
- state all reasons for the **EMPLOYEE'S TERMINATION**;
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who participated in the **TERMINATION** decision;
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in the **TERMINATION** decision; and
 - identify all **DOCUMENTS** relied upon in the **TERMINATION** decision.

- 201.2 Are there any facts that would support the **EMPLOYEE'S TERMINATION** that were first discovered after the **TERMINATION**? If so:
- state the specific facts;
 - state when and how **EMPLOYER** first learned of each specific fact;
 - state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the specific facts; and
 - identify all **DOCUMENTS** that evidence these specific facts.

- 201.3 Were there any other **ADVERSE EMPLOYMENT ACTIONS**, including (the asking party should list the **ADVERSE EMPLOYMENT ACTIONS**):

If so, for each action, provide the following:

- all reasons for each **ADVERSE EMPLOYMENT ACTION**;
- the name, **ADDRESS**, and telephone number of each **PERSON** who participated in making each **ADVERSE EMPLOYMENT ACTION** decision;
- the name, **ADDRESS**, and telephone number of each **PERSON** who provided any information relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision; and
- the identity of all **DOCUMENTS** relied upon in making each **ADVERSE EMPLOYMENT ACTION** decision.

- 201.4 Was the **TERMINATION** or any other **ADVERSE EMPLOYMENT ACTIONS** referred to in Interrogatories 201.1 through 201.3 based in whole or in part on the **EMPLOYEE'S** job performance? If so, for each action:
- identify the **ADVERSE EMPLOYMENT ACTION**;
 - identify the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**;
 - identify any rules, guidelines, policies, or procedures that were used to evaluate the **EMPLOYEE'S** specific job performance;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who had responsibility for evaluating the specific job performance of the **EMPLOYEE**;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the **EMPLOYEE'S** specific job performance that played a role in that **ADVERSE EMPLOYMENT ACTION**; and
 - describe all warnings given with respect to the **EMPLOYEE'S** specific job performance.

201.5 Was any **PERSON** hired to replace the **EMPLOYEE** after the **EMPLOYEE'S TERMINATION** or demotion? If so, state the **PERSON'S** name, job title, qualifications, **ADDRESS** and telephone number, and the date the **PERSON** was hired.

201.6 Has any **PERSON** performed any of the **EMPLOYEE'S** former job duties after the **EMPLOYEE'S TERMINATION** or demotion? If so:

- (a) state the **PERSON'S** name, job title, **ADDRESS**, and telephone number;
- (b) identify the duties; and
- (c) state the date on which the **PERSON** started to perform the duties.

201.7 If the **ADVERSE EMPLOYMENT ACTION** involved the failure or refusal to select the **EMPLOYEE** (for example, for hire, promotion, transfer, or training), was any other **PERSON** selected instead? If so, for each **ADVERSE EMPLOYMENT ACTION**, state the name, **ADDRESS**, and telephone number of each **PERSON** selected; the date the **PERSON** was selected; and the reason the **PERSON** was selected instead of the **EMPLOYEE**.

202.0 Discrimination—Interrogatories to Employee

202.1 Do you contend that any **ADVERSE EMPLOYMENT ACTIONS** against you were discriminatory? If so:

- (a) identify each **ADVERSE EMPLOYMENT ACTION** that involved unlawful discrimination;
- (b) identify each characteristic (for example, gender, race, age, etc.) on which you base your claim or claims of discrimination;
- (c) state all facts upon which you base each claim of discrimination;
- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** with knowledge of those facts; and
- (e) identify all **DOCUMENTS** evidencing those facts.

202.2 State all facts upon which you base your contention that you were qualified to perform any job which you contend was denied to you on account of unlawful discrimination.

203.0 Harassment—Interrogatories to Employee

203.1 Do you contend that you were unlawfully harassed in your employment? If so:

- (a) state the name, **ADDRESS**, telephone number, and employment position of each **PERSON** whom you contend harassed you;
- (b) for each **PERSON** whom you contend harassed you, describe the harassment;

- (c) identify each characteristic (for example, gender, race, age, etc.) on which you base your claim of harassment;
- (d) state all facts upon which you base your contention that you were unlawfully harassed;
- (e) state the name, **ADDRESS**, and telephone number of each **PERSON** with knowledge of those facts; and
- (f) identify all **DOCUMENTS** evidencing those facts.

204.0 Disability Discrimination

204.1 Name and describe each disability alleged in the **PLEADINGS**.

204.2 Does the **EMPLOYEE** allege any injury or illness that arose out of or in the course of **EMPLOYMENT**? If so, state:

- (a) the nature of such injury or illness;
- (b) how such injury or illness occurred;
- (c) the date on which such injury or illness occurred;
- (d) whether **EMPLOYEE** has filed a workers' compensation claim. If so, state the date and outcome of the claim; and
- (e) whether **EMPLOYEE** has filed or applied for disability benefits of any type. If so, state the date, identify the nature of the benefits applied for, and the outcome of any such application.

204.3 Were there any communications between the **EMPLOYEE** (or the **EMPLOYEE'S HEALTH CARE PROVIDER**) and the **EMPLOYER** about the type or extent of any disability of **EMPLOYEE**? If so:

- (a) state the name, **ADDRESS**, and telephone number of each person who made or received the communications;
- (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who witnessed the communications;
- (c) describe the date and substance of the communications; and
- (d) identify each **DOCUMENT** that refers to the communications.

204.4 Did the **EMPLOYER** have any information about the type, existence, or extent of any disability of **EMPLOYEE** other than from communications with the **EMPLOYEE** or the **EMPLOYEE'S HEALTH CARE PROVIDER**? If so, state the sources and substance of that information and the name, **ADDRESS**, and telephone number of each **PERSON** who provided or received the information.

204.5 Did the **EMPLOYEE** need any accommodation to perform any function of the **EMPLOYEE'S** job position or need a transfer to another position as an accommodation? If so, describe the accommodations needed.

204.6 Were there any communications between the **EMPLOYEE** (or the **EMPLOYEE'S HEALTH CARE PROVIDER**) and the **EMPLOYER** about any possible accommodation of **EMPLOYEE**? If so, for each communication:

- (a) state the name, **ADDRESS**, and telephone number of each **PERSON** who made or received the communication;
- (b) state the name, **ADDRESS**, and telephone number of each **PERSON** who witnessed the communication;
- (c) describe the date and substance of the communication; and
- (d) identify each **DOCUMENT** that refers to the communication.

204.7 What did the **EMPLOYER** consider doing to accommodate the **EMPLOYEE**? For each accommodation considered:

- (a) describe the accommodation considered;
- (b) state whether the accommodation was offered to the **EMPLOYEE**;
- (c) state the **EMPLOYEE'S** response; or
- (d) if the accommodation was not offered, state all the reasons why this decision was made;
- (e) state the name, **ADDRESS**, and telephone number of each **PERSON** who on behalf of **EMPLOYER** made any decision about what accommodations, if any, to make for the **EMPLOYEE**; and
- (f) state the name, **ADDRESS**, and telephone number of each **PERSON** who on behalf of the **EMPLOYER** made or received any communications about what accommodations, if any, to make for the **EMPLOYEE**.

205.0 Discharge in Violation of Public Policy

205.1 Do you contend that the **EMPLOYER** took any **ADVERSE EMPLOYMENT ACTION** against you in violation of public policy? If so:

- (a) identify the constitutional provision, statute, regulation, or other source of the public policy that you contend was violated; and
- (b) state all facts upon which you base your contention that the **EMPLOYER** violated public policy.

206.0 Defamation

206.1 Did the **EMPLOYER'S** agents or employees **PUBLISH** any of the allegedly defamatory statements identified in the **PLEADINGS**? If so, for each statement:

- (a) identify the **PUBLISHED** statement;
- (b) state the name, **ADDRESS**, telephone number, and job title of each person who **PUBLISHED** the statement;
- (c) state the name, **ADDRESS**, and telephone number of each person to whom the statement was **PUBLISHED**;

- (d) state whether, at the time the statement was **PUBLISHED**, the **PERSON** who **PUBLISHED** the statement believed it to be true; and
- (e) state all facts upon which the **PERSON** who published the statement based the belief that it was true.

206.2 State the name and **ADDRESS** of each agent or employee of the **EMPLOYER** who responded to any inquiries regarding the **EMPLOYEE** after the **EMPLOYEE'S TERMINATION**.

206.3 State the name and **ADDRESS** of the recipient and the substance of each post-**TERMINATION** statement **PUBLISHED** about **EMPLOYEE** by any agent or employee of **EMPLOYER**.

207.0 Internal Complaints

207.1 Were there any internal written policies or regulations of the **EMPLOYER** that apply to the making of a complaint of the type that is the subject matter of this lawsuit? If so:

- (a) state the title and date of each **DOCUMENT** containing the policies or regulations and a general description of the **DOCUMENT'S** contents;
- (b) state the manner in which the **DOCUMENT** was communicated to **EMPLOYEES**;
- (c) state the manner, if any, in which **EMPLOYEES** acknowledged receipt of the **DOCUMENT** or knowledge of its contents, or both;
- (d) state, if you contend that the **EMPLOYEE** failed to use any available internal complaint procedures, all facts that support that contention; and
- (e) state, if you contend that the **EMPLOYEE'S** failure to use internal complaint procedures was excused, all facts why the **EMPLOYEE'S** use of the procedures was excused.

207.2 Did the **EMPLOYEE** complain to the **EMPLOYER** about any of the unlawful conduct alleged in the **PLEADINGS**? If so, for each complaint:

- (a) state the date of the complaint;
- (b) state the nature of the complaint;
- (c) state the name and **ADDRESS** of each **PERSON** to whom the complaint was made;
- (d) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who investigated the complaint;
- (e) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who participated in making decisions about how to conduct the investigation;

- (f) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who was interviewed or who provided an oral or written statement as part of the investigation of the complaint;
- (g) state the nature and date of any action taken in response to the complaint;
- (h) state whether the **EMPLOYEE** who made the complaint was made aware of the actions taken by the **EMPLOYER** in response to the complaint, and, if so, state how and when;
- (i) identify all **DOCUMENTS** relating to the complaint, the investigation, and any action taken in response to the complaint; and
- (j) state the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the **EMPLOYEE'S** complaint or the **EMPLOYER'S** response to the complaint.

208.0 Governmental Complaints

- 208.1 Did the **EMPLOYEE** file a claim, complaint, or charge with any governmental agency that involved any of the material allegations made in the **PLEADINGS**? If so, for each claim, complaint, or charge:
- (a) state the date on which it was filed;
 - (b) state the name and **ADDRESS** of the agency with which it was filed;
 - (c) state the number assigned to the claim, complaint, or charge by the agency;
 - (d) state the nature of each claim, complaint, or charge made;
 - (e) state the date on which the **EMPLOYER** was notified of the claim, complaint, or charge;
 - (f) state the name, **ADDRESS**, and telephone number of all **PERSONS** within the governmental agency with whom the **EMPLOYER** has had any contact or communication regarding the claim, complaint, or charge;
 - (g) state whether a right to sue notice was issued and, if so, when; and
 - (h) state whether any findings or conclusions regarding the complaint or charge have been made, and, if so, the date and description of the agency's findings or conclusions.
- 208.2 Did the **EMPLOYER** respond to any claim, complaint, or charge identified in Interrogatory 208.1? If so, for each claim, complaint, or charge:
- (a) state the nature and date of any investigation done or any other action taken by the **EMPLOYER** in response to the claim, complaint, or charge;
 - (b) state the name, **ADDRESS**, telephone number, and job title of each person who investigated the claim, complaint, or charge;
 - (c) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who participated in making decisions about how to conduct the investigation; and

- (d) state the name, **ADDRESS**, telephone number, and job title of each **PERSON** who was interviewed or who provided an oral or written statement as part of the investigation.

209.0 Other Employment Claims by Employee or Against Employer

- 209.1 Except for this action, in the past 10 years has the **EMPLOYEE** filed a civil action against any employer regarding the **EMPLOYEE'S** employment? If so, for each civil action:
- (a) state the name, **ADDRESS**, and telephone number of each employer against whom the action was filed;
 - (b) state the court, names of the parties, and case number of the civil action;
 - (c) state the name, **ADDRESS**, and telephone number of any attorney representing the **EMPLOYEE**; and
 - (d) state whether the action has been resolved or is pending.
- 209.2 Except for this action, in the past 10 years has any employee filed a civil action against the **EMPLOYER** regarding his or her employment? If so, for each civil action:
- (a) state the name, **ADDRESS**, and telephone number of each employee who filed the action;
 - (b) state the court, names of the parties, and case number of the civil action;
 - (c) state the name, **ADDRESS**, and telephone number of any attorney representing the **EMPLOYER**; and
 - (d) state whether the action has been resolved or is pending.

210.0 Loss of Income—Interrogatories to Employee

- 210.1 Do you attribute any loss of income, benefits, or earning capacity to any **ADVERSE EMPLOYMENT ACTION**? (If your answer is "no," do not answer Interrogatories 210.2 through 210.6.)
- 210.2 State the total amount of income, benefits, or earning capacity you have lost to date and how the amount was calculated.
- 210.3 Will you lose income, benefits, or earning capacity in the future as a result of any **ADVERSE EMPLOYMENT ACTION**? If so, state the total amount of income, benefits, or earning capacity you expect to lose, and how the amount was calculated.
- 210.4 Have you attempted to minimize the amount of your lost income? If so, describe how; if not, explain why not.

- 210.5 Have you purchased any benefits to replace any benefits to which you would have been entitled if the **ADVERSE EMPLOYMENT ACTION** had not occurred? If so, state the cost for each benefit purchased.
- 210.6 Have you obtained other employment since any **ADVERSE EMPLOYMENT ACTION**? If so, for each new employment:
- state when the new employment commenced;
 - state the hourly rate or monthly salary for the new employment; and
 - state the benefits available from the new employment.

211.0 Loss of Income—Interrogatories to Employer
[See instruction 2(d).]

- 211.1 Identify each type of **BENEFIT** to which the **EMPLOYEE** would have been entitled, from the date of the **ADVERSE EMPLOYMENT ACTION** to the present, if the **ADVERSE EMPLOYMENT ACTION** had not happened and the **EMPLOYEE** had remained in the same job position. For each type of benefit, state the amount the **EMPLOYER** would have paid to provide the benefit for the **EMPLOYEE** during this time period and the value of the **BENEFIT** to the **EMPLOYEE**.
- 211.2 Do you contend that the **EMPLOYEE** has not made reasonable efforts to minimize the amount of the **EMPLOYEE'S** lost income? If so:
- describe what more **EMPLOYEE** should have done;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts that support your contention; and
 - identify all **DOCUMENTS** that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.
- 211.3 Do you contend that any of the lost income claimed by the **EMPLOYEE**, as disclosed in discovery thus far in this case, is unreasonable or was not caused by the **ADVERSE EMPLOYMENT ACTION**? If so:
- state the amount of claimed lost income that you dispute;
 - state all facts upon which you base your contention;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts; and
 - identify all **DOCUMENTS** that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

**212.0 Physical, Mental, or Emotional Injuries—
Interrogatories to Employee**

- 212.1 Do you attribute any physical, mental, or emotional injuries to the **ADVERSE EMPLOYMENT ACTION**? (If your answer is "no," do not answer Interrogatories 212.2 through 212.7.)
- 212.2 Identify each physical, mental, or emotional injury that you attribute to the **ADVERSE EMPLOYMENT ACTION** and the area of your body affected.
- 212.3 Do you still have any complaints of physical, mental, or emotional injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each complaint state:
- a description of the injury;
 - whether the complaint is subsiding, remaining the same, or becoming worse; and
 - the frequency and duration.
- 212.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure section 2034) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each **HEALTH CARE PROVIDER** state:
- the name, **ADDRESS**, and telephone number;
 - the type of consultation, examination, or treatment provided;
 - the dates you received consultation, examination, or treatment; and
 - the charges to date.
- 212.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each medication state:
- the name of the medication;
 - the name, **ADDRESS** and telephone number of the **PERSON** who prescribed or furnished it;
 - the date prescribed or furnished;
 - the dates you began and stopped taking it; and
 - the cost to date.
- 212.6 Are there any other medical services not previously listed in response to interrogatory 212.4 (for example, ambulance, nursing, prosthetics) that you received for injuries attributed to the **ADVERSE EMPLOYMENT ACTION**? If so, for each service state:
- the nature;
 - the date;
 - the cost; and
 - the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**.

- 212.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each injury state:
- the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
 - the complaints for which the treatment was advised; and
 - the nature, duration, and estimated cost of the treatment.

213.0 Other Damages—Interrogatories to Employee

- 213.1 Are there any other damages that you attribute to the **ADVERSE EMPLOYMENT ACTION**? If so, for each item of damage state:
- the nature;
 - the date it occurred;
 - the amount; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has knowledge of the nature or amount of the damage.
- 213.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in Interrogatory 213.1? If so, identify the **DOCUMENTS** and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

214.0 Insurance

- 214.1 At the time of the **ADVERSE EMPLOYMENT ACTION**, was there in effect any policy of insurance through which you were or might be insured in any manner for the damages, claims, or actions that have arisen out of the **ADVERSE EMPLOYMENT ACTION**? If so, for each policy state:
- the kind of coverage;
 - the name and **ADDRESS** of the insurance company;
 - the name, **ADDRESS**, and telephone number of each named insured;
 - the policy number;
 - the limits of coverage for each type of coverage contained in the policy;
 - whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
 - the name, **ADDRESS**, and telephone number of the custodian of the policy.
- 214.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **ADVERSE EMPLOYMENT ACTION**? If so, specify the statute.

215.0 Investigation

- 215.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **ADVERSE EMPLOYMENT ACTION**? If so, for each individual state:
- the name, **ADDRESS**, and telephone number of the individual interviewed;
 - the date of the interview; and
 - the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.
- 215.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **ADVERSE EMPLOYMENT ACTION**? If so, for each statement state:
- the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
 - the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
 - the date the statement was obtained; and
 - the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

216.0 Denials and Special or Affirmative Defenses

- 216.1 Identify each denial of a material allegation and each special or affirmative defense in your **PLEADINGS** and for each:
- state all facts upon which you base the denial or special or affirmative defense;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - identify all **DOCUMENTS** and all other tangible things, that support your denial or special or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

217.0 Response to Request for Admissions

- 217.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- state the number of the request;
 - state all facts upon which you base your response;
 - state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts; and
 - identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.