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DEERING'S CALIFORNIA CODES ANNOTATED  
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(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 9. Oral Deposition Inside California  
Article 4. Objections, Sanctions, Protective Orders, Motions to Compel, and Suspension of Depositions

#### GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

*Cal Code Civ Proc § 2025.450 (2013)*

#### **§ 2025.450. Failure to comply with deposition notice; Motion for order compelling compliance; Requirements; Discovery of electronically stored information; Monetary and other sanctions**

(a) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under Section 2025.230, without having served a valid objection under Section 2025.410, fails to appear for examination, or to proceed with it, or to produce for inspection any document, **electronically stored information**, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, **electronically stored information**, or tangible thing described in the deposition notice.

(b) A motion under subdivision (a) shall comply with both of the following:

(1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document, **electronically stored information**, or tangible thing described in the deposition notice.

(2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents, **electronically stored information**, or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance.

**(c) In a motion under subdivision (a) relating to the production of electronically stored information, the party or party-affiliated deponent objecting to or opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that the information is from a source that is not reasonably accessible because of the undue burden or expense shall bear the burden of demonstrating that the information is from a source that is not reasonably accessible because of undue burden or expense.**

**(d) If the party or party-affiliated deponent from whom discovery of electronically stored information is sought establishes that the information is from a source that is not reasonably accessible because of the undue burden or**

expense, the court may nonetheless order discovery if the demanding party shows good cause, subject to any limitations imposed under subdivision (f).

(e) If the court finds good cause for the production of electronically stored information from a source that is not reasonably accessible, the court may set conditions for the discovery of the electronically stored information, including allocation of the expense of discovery.

(f) The court shall limit the frequency or extent of discovery of electronically stored information, even from a source that is reasonably accessible, if the court determines that any of the following conditions exists:

(1) It is possible to obtain the information from some other source that is more convenient, less burdensome, or less expensive.

(2) The discovery sought is unreasonably cumulative or duplicative.

(3) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought.

(4) The likely burden or expense of the proposed discovery outweighs the likely benefit, taking into account the amount in controversy, the resources of the parties, the importance of the issues in the litigation, and the importance of the requested discovery in resolving the issues.

(g)

(1) If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of that party and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010) against that party deponent or against the party with whom the deponent is affiliated. In lieu of, or in addition to, this sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(i)

(1) Notwithstanding subdivisions (g) and (h), 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:**

(1) Added ", electronically stored information," wherever it appears in subds (a) and (b); (2) added subds (c)-(f) and (i); and (3) redesignated former subds (c) and (d) to be subds (g) and (h).

**Historical Derivation:**

Former CCP § 2025(j)(3), added Stats 1986 ch 1334 § 2, amended Stats 1987 ch 86 § 8, Stats 1988 ch 160 § 20 (ch 553 prevails), ch 553 § 3, Stats 1989 ch 1137 § 1, ch 1360 § 13, ch 1416 § 29.5, Stats 1990 ch 1491 § 11.5, Stats 1991 ch 1090 § 10, Stats 1993 ch 926 § 9, Stats 1994 ch 660 § 5, Stats 1995 ch 576 § 7, Stats 1997 ch 395 § 1, Stats 1998 ch 875 § 1, ch 932 § 22, ch 974 § 4, Stats 1999 ch 892 § 13, Stats 2000 ch 474 § 1, Stats 2001 ch 812 § 9.6, Stats 2002 ch 1068 § 2.

**Law Revision Commission Comments:****2004**

Subdivision (a) of Section 2025.450 continues the first sentence of former Section 2025(j)(3) without change, except to conform the cross-references.

Subdivision (b) continues the second sentence of former Section 2025(j)(3) without substantive change.

Subdivision (c) continues the third and fourth sentences of former Section 2025(j)(3) without substantive change.

Subdivision (d) continues the second paragraph of former Section 2025(j)(3) without change, except to conform the cross-references.

**Editor's Notes**

For notes of decisions derived from cases decided under former CCP § 2025, see *CCP § 2025.010*.

**Collateral References:**

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 85 "Automobiles: Discovery"*.

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.10*.

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.13.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 82 "Discovery: Privileges And Other Discovery Limitations" § 82.30.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.11.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.30.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 83 "Discovery: Depositions" § 83.40.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 85 "Discovery: Production Or Inspection Of Tangible Evidence" § 85.90.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 89A "Discovery: Review Of Discovery Orders" § 89A.23.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 180 "Pretrial Proceedings" § 180.31.*

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

*Cal. Fam. Law Practice & Procedure (Matthew Bender(R)), § 110.14.*

#### **Law Review Articles:**

Case Strategy: Discovery Sanctions in Federal and State Court. *29 LA Law* 29 (Fall, 2006).

#### **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.

#### **LexisNexis 50 State Surveys, Legislation & Regulations**

Depositions & Interrogatories

NOTES OF DECISIONS 1. Applicability

## 1. Applicability

Trial court abused its discretion by not imposing a terminating sanction pursuant to *CCP* §§ 2025.450, subd. (d), 2023.030, for a manufacturer's persistent and flagrant discovery misconduct under *CCP* § 2023.010, subds. (d)-(g), when more discovery abuses came to light during the trial of a consumer warranty and fraud case. *Doppes v. Bentley Motors, Inc.* (2009, 4th Dist) 174 Cal App 4th 967, 94 Cal Rptr 3d 802, 2009 Cal App LEXIS 904, review denied *Doppes (August B.) v. Bentley Motors, Inc.* (2009, Cal.) 2009 Cal. LEXIS 10331.