

BUSINESS RECORDS SUBPOENA

Getting Business Records for Litigation

Disclaimer: This guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in the Sacramento County Superior Court. Please keep in mind that each court may have different requirements. If you need further assistance, consult a lawyer.

BACKGROUND

Parties in a lawsuit can use “business records subpoenas” to obtain records and information from third parties, such as banks, employers, or police departments. Special requirements apply if the records are “consumer” or “employee” records. **Warning!** The process can take up to 30 days even if everything goes smoothly, so plan ahead.

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This packet includes:

- Step by Step Instructions
- Sample Deposition Subpoena for Production of Business Records (*Judicial Council Form SUBP-010*)
- Attachment 3
- Sample Notice to Consumer or Employee and Objection (*Judicial Council Form SUBP-025*)
- Worksheet to Determine Dates of Service

Step-by-Step Instructions

1. DECIDE WHETHER THE DOCUMENTS YOU NEED ARE “CONSUMER” OR “EMPLOYEE” RECORDS

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

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

Once you determine whether you are seeking consumer/employee records, you can determine what steps to take and how far in advance you need to start.

2. SET A DATE AND LOCATION FOR PRODUCTION

Select your date: at least 15 days away for non-consumer/employee records, or at least 30 days away if the records are consumer/employee records.

- **Tip:** A Worksheet to Determine Dates of Service is at the end of this Guide.

Contact a copy service in your area to see if they handle document subpoenas; the service you hire to do this is called the “deposition officer.” You may need to contact several to find one that provides this service.

3. COMPLETE THE REQUIRED FORMS

You will need two forms to subpoena business records:

- Deposition Subpoena for Production of Business Records (SUBP-010) <http://courts.ca.gov/documents/subp010.pdf>
- Attachment 3, describing the records you need.

Step 3: Judicial Council form SUBP-010 (Page 1)

| | |
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| SUBP-010 | |
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): | |
| PAUL SAMPLE 2036 DONNER DRIVE SACRAMENTO, CA 95826 TELEPHONE NO.: 916-123-4567 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): IN PRO PER | |
| FOR COURT USE ONLY | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 NINTH ST MAILING ADDRESS: CITY AND ZIP CODE: SACRAMENTO, CA 95814-1380 BRANCH NAME: | |
| PLAINTIFF/PETITIONER: PAUL SAMPLE DEFENDANT/RESPONDENT: PETER PERPETRATOR | |
| DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS | |
| CASE NUMBER: 34-2011-00112345 | |
| THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of) | |
| ACME, INC., 987 MAIN ST., SACRAMENTO CA 95814 | |
| 1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in item 3, as follows: | |
| To (name of deposition officer): SPEEDY COPY On (date): JANUARY 15, 2012 At (time): 10AM Location (address): 567 OAK ST. SACRAMENTO CA 95814 | |
| Do not release the requested records to the deposition officer prior to the date and time shown in item 1. | |
| a. <input checked="" type="checkbox"/> by delivering a true, legible, and durable copy of the business records described in item 3, enclosed in a paper wrapper with the title and number of the action, name of witness, and date of subpoena clearly written on it. The inner wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and mailed to the deposition officer at the address in item 1. | |
| b. <input type="checkbox"/> by delivering a true, legible, and durable copy of the business records described in item 3 to the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparation under Evidence Code section 1563(b). | |
| c. <input type="checkbox"/> by making the original business records described in item 3 available for inspection at your business address, and permitting copying at your business address under reasonable business hours. | |
| 2. The records are to be produced by the date and time shown in item 1 (but not sooner than 20 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later). Reasonable costs of locating records, making them available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1561. | |
| 3. The records to be produced are described as follows: | |
| <input checked="" type="checkbox"/> Continued on Attachment 3. | |
| 4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CODE OF CIVIL PROCEDURE SECTION 1985.3 OR 1985.6 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT OF THE PARTIES, WITNESSES, AND CONSUMER OR EMPLOYEE AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS. | |
| DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY. | |
| Date issued: DECEMBER 14, 2011 | |
| _____ (TYPE OR PRINT NAME) | |
| _____ (SIGNATURE OF PERSON ISSUING SUBPOENA) | |
| _____ (TITLE) | |
| _____ (Proof of service on reverse) | |
| Page _____ | |
| Form Adopted for Mandatory Use Judicial Council of California SUBP-010 [Rev. July 1, 2010] | |
| DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS | |
| Code of Civil Procedure, §§ 2020.410-2020.415 Government Code, § 68090 www.courtinfo.ca.gov | |

Your name, address, and phone number. "In Pro Per" means you are representing yourself.

County and address of the court where the case is pending.

Your name and the other party's name as they appear on the complaint

Case number

Name, address, phone number of the "witness" (company with records)

Date, place and time for delivery of the business records ("the production date"), the date you chose in Step 2.

Check option "a," which requires the witness to mail copies of the records to the deposition officer.

Leave this area blank. Check "Continued on Attachment 3."

Leave this area blank. The clerk will fill it in when you take the subpoena to court to get it issued in Step 4.

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

NOTE: Fill in the names and case number on page 2, and leave the rest blank. The person who serves the subpoena in Step 10 will fill it out.

Step 3: Attachment 3

ATTACHMENT 3: ITEMS TO BE PRODUCED

1. Any and all any and all police reports, arrest reports, case reports, supplementary reports, street files, laboratory reports, notes and memoranda, printed or otherwise, and files relating to the arrest of [Party Name], date of birth of [Party Name], on or about [Date of Arrest or Incident], at or near [Location].

2. Any and all phone records for the year of [year or range of dates] pertaining to [name of Consumer/Employee] at [Consumer/Employee's phone number or numbers], including but not limited to text and data and call records.

3. Employment records for Employee [employee's name] whose Social Security number is _____, and whose date of birth is _____, including the following: All documents relating to Employee's employment from [date] to [date], including but not limited to pay checks, pay stubs, reviews, correspondence, and W-2 forms.

4. All documents relating to medical and physical therapy, examinations, treatment and services rendered to [Party] from [date] to the present, including but not limited to reports, summaries, prognoses, x-rays, statements, and billings.

5. All documents relating to operation, maintenance, and repair of the automobile [Party] was operating during the accident which is the subject of this action, including repair estimates, repair receipts, owner's manuals, and records of repairs made by any person or entity, including [Party], from [date] to the present.

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

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

Sample language for several common situations is listed here. For more information about how to request specific types of records, talk to the reference librarian.

4. TAKE THE SUBPOENA TO COURT FOR THE CLERK TO “ISSUE” IT

Take the subpoena to the court where your case is pending. Ask the court clerk to issue the subpoena (by stamping it). When the clerk stamps it with the court’s seal, it becomes an official court order. Make several copies of the stamped subpoena. You don’t need to file anything now.

5. IF THE RECORDS ARE NOT CONSUMER OR EMPLOYEE RECORDS, SKIP TO STEP 10

6. EXTRA STEPS IF YOU NEED “CONSUMER” OR “EMPLOYEE” RECORDS.

To protect people’s privacy, subpoenas of consumer and employee records require an extra procedure to give the consumer/employee time to object. This adds up to two weeks to the process. The consumer/employee must be served at least 20 days before the date of production (25 if you serve by mail) ([CCP §2020.410](#)) **and** 5 days (10 if you serve by mail) before you serve the witness. [CCP §1985.3\(b\)\(3\)](#).

7. COMPLETE THE ADDITIONAL REQUIRED FORM

In addition to the forms from Step 3, fill out:

- Notice to Consumer or Employee and Objection (SUBP-025)
(Page 1) <http://courts.ca.gov/documents/subp025.pdf>

Make several copies of all forms.

Step 7: Judicial Council Form SUBP-025 (Page 1)

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|---|--|
| SUBP-025 | |
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): PAUL SAMPLE 2036 DONNER DRIVE SACRAMENTO, CA 95826 | <small>FOR COURT USE ONLY</small> |
| TELEPHONE NO.: 916-123-4567 FAX NO. (Optional): | Your name, address, and phone number. "In Pro Per" means you are representing yourself. |
| E-MAIL ADDRESS (Optional): | |
| ATTORNEY FOR (Name): IN PRO PER | |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO | County and address of the court where the case is pending. |
| STREET ADDRESS: 720 NINTH ST | |
| MAILING ADDRESS: | |
| CITY AND ZIP CODE: SACRAMENTO, CA 95814-1380 | Your name and the other party's name as they appear on the complaint |
| BRANCH NAME: | |
| PLAINTIFF/ PETITIONER: PAUL SAMPLE | |
| DEFENDANT/ RESPONDENT: PETER PERPETRATOR | 34-2011-00112345 |
| NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1985.3, 1985.6) | Case number |
| NOTICE TO CONSUMER OR EMPLOYEE | |
| TO (name): THERESA THIRDPARTY | Name of the consumer/employee |
| 1. PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): PAUL SAMPLE SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify date): JANUARY 15, 2012 The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought): ACME, INC. 987 MAIN ST., SACRAMENTO CA 95814 A copy of the subpoena is attached. | |
| 2. IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED. IN ITEM a. OR b. BELOW: | Your name |
| a. If you are a party to the above-entitled action, you must file a motion pursuant to Code of Civil Procedure section 1987 to quash or modify the subpoena and give notice of that motion to the witness and the deposition officer named in the subpoena at least five days before the date set for production of the records. | Date of production (from Step 2) |
| b. If you are not a party to this action, you must serve on the requesting party and on the witness , before the production of the records, a written objection that states the specific grounds on which production of such records is prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Service on the reverse side indicating whether you personally served or mailed the objection. The objection must be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES. | Name and address of the witness (company that has the records) |
| 3. YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS. | Date, fill in your name, and sign |
| Date: DECEMBER 14, 2011 | |
| PAUL SAMPLE <small>(TYPE OR PRINT NAME)</small> | (SIGNATURE OF <input checked="" type="checkbox"/> REQUESTING PARTY <input type="checkbox"/> ATTORNEY) |
| OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS | |
| 1. <input type="checkbox"/> I object to the production of all of my records specified in the subpoena. | |
| 2. <input type="checkbox"/> I object only to the production of the following specified records: | |
| 3. The specific grounds for my objection are as follows: | NOTE: Leave this portion blank. The consumers/employees fill it in if they object to the production. |
| Date: | |
| _____ <small>(TYPE OR PRINT NAME)</small> | _____ <small>(SIGNATURE)</small> |
| <small>(Proof of service on reverse)</small> | |
| Form Adopted for Mandatory Use Judicial Council of California SUBP-025 [Rev. January 1, 2008] | NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION <small>Code of Civil Procedure, §§ 1985.3, 1985.6, 2020.010-2020.510 www.courtinfo.ca.gov</small> |

NOTE: Fill in the names and case number on page 2, and leave the rest blank. The person who serves the notice in Step 8 will fill it out.

8. SERVE THE CONSUMER/EMPLOYEE WITH THE DEPOSITION SUBPOENA AND NOTICE TO CONSUMER OR EMPLOYEE

Serve the consumer/employee with a **copy** of the “Deposition Subpoena” (plus Attachment 3), and the **original** “Notice to Consumer or Employee.” You can have this served personally, or by mail to the consumer’s last known address. **Have the server sign the proof of service on the back of a copy of the Notice.**

The person who is serving your papers for you must complete a proof of service form, typically, either a Proof of Personal Service form or a Proof of Service by First Class Mail form. For more information on these Proofs of Service, see the guides on our website at <http://www.saclaw.org/pages/personal-service.aspx> and <http://www.saclaw.org/pages/pos-mail.aspx>, respectively.

9. SERVE THE OTHER PARTY OR PARTIES

Have copies of the Deposition Subpoena (plus Attachment 3) and the “Notice to Consumer or Employee” (with the signed proof of service on the back) served on all parties by mail (if they have attorneys, serve the attorneys instead). Keep the original proof(s) of service.

Wait at least 10 calendar days (5 if you have the consumer personally served) before moving on to Step 10, Service of the Witness.

The consumer/employee’s deadline to object is 5 days before the production date. A non-party consumer/employee just needs to fill out the objection on the “Notice to Consumer or Employee.” A consumer/employee who is a party needs to file a motion to quash the subpoena in court.

If the consumer/employee objects or files a motion to quash, the Witness is not permitted to respond to your subpoena. You may make a motion to compel production (deadline: 20 days after service of the written objection), or file an opposition to the motion to quash, as appropriate. Motions to compel production and motions to quash subpoenas are not covered in this guide; see a reference librarian for more information on these processes.

10. SERVE THE WITNESS (THE COMPANY OR AGENCY WITH THE BUSINESS RECORDS) BY PERSONAL SERVICE AT LEAST 15 DAYS BEFORE PRODUCTION DATE

If the documents are **not** consumer or employee records, have the witness *personally served* with:

- Deposition Subpoena for Production of Business Records (SUBP-010) <http://courts.ca.gov/documents/subp010.pdf>
- Attachment 3

If the documents **are** consumer/employee records, have the witness *personally served* with:

- Deposition Subpoena for Production of Business Records (SUBP-010) <http://courts.ca.gov/documents/subp010.pdf>
- Attachment 3
- Notice to Consumer (SUBP-025) <http://courts.ca.gov/documents/subp025.pdf>, showing signed proof of service on the back.

Serve these documents at least 15 days before the production date. ([CCP §2020.410\(c\)](#).) If the witness is an organization, any officer, director, custodian of records, or any agent or employee authorized by the organization to accept service of a subpoena can be served on behalf of the organization. ([CC P § 2020.220](#)).

Requirements for personal service: The person who does the service must be over the age of 18 and not a party to your action. For instructions on how to fill out the Proof of Service by Personal Service, complete with sample forms, see the “Personal Service of Court Documents” Step-by-Step guide on our website at <http://bit.ly/HWPYSO>.

The witness is entitled to demand a witness fee of \$15 ([California Evidence Code §1563\(b\)\(6\)](#)), so write a check for the server to take along.

11. SERVE THE OTHER PARTY OR PARTIES

Skip this step if you completed steps 6-9, Notice to Consumer or Employee. If you did, the service in Step 9 is sufficient.

Serve the other all parties by mail (if they have attorneys, serve the attorneys instead). The server must be over the age of 18 and not a party to your action. For instructions on how to fill out the Proof of Service by Mail, complete with sample forms, see the “Proof of Service by Mail” Step-by-Step guide on our website at at <http://www.saclaw.org/pages/pos-mail.aspx>.

12. WAIT FOR THE DOCUMENTS

You’re done for now. The documents should arrive at the copy service by your chosen date. The copy service should pay any costs (and bill you for them later).

If your subpoena is ignored, or you get nothing but a written objection, you may need to file a motion in court to force (“compel”) the Witness to produce the documents. Motions to compel production are not covered in this guide; see a reference librarian for more information on this process.

FOR HELP

For assistance with the business records subpoena, you may want to contact a professional photocopier service to act as Deposition Officer. In some cases they will do the entire process (forms, service, and copying) for you for a fee. Call a local law office and ask who they use, or look under "Copying and Duplicating Services" or "Attorney Support Services" in the Yellow Pages.

FOR MORE INFORMATION

On the Web:

The "Deposition Subpoena – Business Records" (SUBP-010) and "Notice to Consumer or Employee" (SUBP-025) forms are available from the Judicial Council's website at <http://www.courts.ca.gov/forms.htm>.

You can learn more about discovery in general at Nolo.com:
<http://www.nolo.com/legal-encyclopedia/formal-discovery-gathering-evidence-lawsuit-29764.html>.

Information about preparing evidence for admission in a court trial or hearing can be found on the Judicial Council's website at:
<http://www.courts.ca.gov/xbcr/partners/getting-evidence.pdf>.

At the Law Library:

The following books have information about preparing business records subpoenas:

How to Solve Divorce Problems in California, pp. 174-181. KFC 126 .S55 (Self-Help)

Litigation by the Numbers Chap.5, Discovery, Sec. 5.3.5. KFC 995 .G67

For examples of the types of documents you may want to request in different types of cases, see:

Deposition Checklists and Strategies KF 8900 .S33

This book is divided into chapters by type of case (vehicular liability, premises liability, medical malpractice, etc). Each chapter has a section on "Documents and Exhibits" which lists the types of documents that may be useful in that type of case.

Information on consumer/employee objections can be found in:

California Points and Authorities KFC 1010. B4 (Ready Reference)
Vol. 8, Chap. 81, Sec. 240-254

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR NEED HELP FINDING OR USING THE MATERIALS LISTED, PLEASE ASK A REFERENCE LIBRARIAN.

Business Records Subpoena: Worksheet to Determine Dates for Service

Work backwards from the date you want to receive the documents (Date of Production).

1. Choose the date for production of documents.
2. Count backwards 15 days. If the 15th day is a holiday or weekend, keep going until you reach a workday. This is the **last** day the Witness can be served. (It is a good idea to serve it a few days early, in case of problems with the service.)
3. **If you are requesting consumer/employee records:** Choose the date you expect to **actually serve** the Witness (on or before the date in step 2).
4. Count backwards 10 days from the date you expect to **actually serve** the Witness. Again, if the 10th day is a holiday or weekend, keep counting backwards until you reach a workday. This is the **last** day the Consumer/Employee can be served by mail.

If you are short on time, you can save a few days by having the Consumer/Employee personally served. In this case, you only have to count back 5 days from the date you expect to serve the Witness.

Worksheet: Fill this out to figure out the dates (using a calendar can help):

| Event: | Instructions: | Date: |
|--|--|--------------|
| Date of Production | Enter the date you want to receive the documents here: | ___/___/20__ |
| Last day to serve the Witness | Starting from the Date of Production, count backwards 15 calendar days. If the day you land on is a weekend or holiday, keep going until you reach a workday. This is the last day to serve the Witness . Enter that date here: You can serve the Witness earlier, if you choose. | ___/___/20__ |
| Day you actually plan to serve the Witness | If you decide to serve the Witness earlier, enter the date you actually plan to serve the Witness here: | ___/___/20__ |
| Last day to serve the Consumer/ Employee | Starting from the day you actually plan to serve the Witness, count backwards 10 calendar days. If the day you land on is a weekend or holiday, keep going until you reach a workday. This is the last day to serve the Consumer/ Employee by mail . Enter that date here: You can serve the Consumer/Employee earlier, if convenient. If you are short on time, you can have the Consumer/ Employee personally served. If you plan to have the consumer/Employee personally served, instead of 10 days, count backward 5 days from the day you actually plan to serve the witness. | ___/___/20__ |