

LET'S TAKE THE GAME ELEMENT OUT OF DISCOVERY



HOW TO PROPOUND AND RESPOND TO WRITTEN DISCOVERY

THE PURPOSE OF DISCOVERY



“The basic purpose of discovery is to take the ‘game’ element out of trial preparation by enabling parties to obtain the evidence necessary to evaluate and resolve their dispute beforehand.” Weil and Brown, *Civil Procedure Before Trial* (TRG, 2014) Section 8.1 citing *Greyhound Cor. v. Superior Court* (1961) 56 C2d355, 376

The legislative purpose of the discovery statutes is *“to educate the parties concerning their claims and defenses so as to encourage settlements and to expedite and facilitate trial.”* *Emerson Electric Co. v. Superior Court* (1997) 16 Cal. 4th 1101, 1108.

In order to accomplish the legislative purpose behind the discovery statutes they *“must be construed liberally in favor of disclosure”* *Emerson Elect. Co. v. Superior Court* (1997) at 1107 quoting *Greyhound* at 377

SCOPE OF DISCOVERY



- Relevancy to the subject matter is not defined by the pleadings. *Darbee v. Superior Court* (1962) 208 CA2d 680
- Admissibility at trial is not the test. *Davies v. Superior Court* (1984) 36 C3d 291, 301
- Heresay is not a valid objection. *Smith v. Superior Court* (1961) 189 CA 2d 6, 11-12
- Fishing trips are permissible. *Greyhound Corp v. Superior Court* (1961) 56 C2d 355, 384
- Already obtained enough information from other discovery devices not a valid objection *TBG Ins. Services Corp. v. Superior Court* (2002) 96 CA4th 443, 448
- You may discovery irrelevant matters so long as the revelation may lead to the discovery admissible evidence. *Dodge, Warren & Peters Insurance Services, Inc. v. Riley* (2003) 105 CA4th 1414
- Size of case is a factor in determining relevancy *Bridgestone/Firestone, Inc. v. Superior Court* (1992) 7 CA4th 1384, 1391
- More burden upon the adversary than the value of the information warrants. *Greyhound* at 384-385; *Calcor Space Facility, Inc. v. Sup. Ct.* (1997) 53 CA4th 216
- Privileged communications are protected regardless of their relevancy to the issues in the litigation, and despite any private or public interest in disclosure. *Rittenhouse v. Superior Court*(1991) 235 CA3d, 1584,1590

FACT PATTERN #1



Plaintiff, a twenty eight year old single female, was shopping at the cosmetic counter of a major department store and bought a new facial cream called *Replenish*. That evening, after plaintiff took her shower, she applied the facial cream to her face. within moments her face began to burn. Within hours she was at the emergency room complaining of a burning sensation. She was diagnosed with first degree burns on her face. Plaintiff is now claiming she has permanent scarring on her face and is demanding \$1,000,000.

HYP0 #1



Using Fact Pattern #1, the following special interrogatory was served by mail on the defendant 10 days after the complaint:

Special Interrogatory #97: Please state the names, addresses and phone numbers of all persons who handles all complaints regarding any product produced by you in the last 10 years.

What if anything is wrong with this Special Interrogatory?