

## Taking Remote Depositions

“Uncertainty creates great opportunity”

Reference Documents and Statutes:

### **Sample Notice Language:**

**PLEASE TAKE FURTHER NOTICE** that the testimony will be recorded stenographically by a certified court reporter authorized to administer oaths under the laws of the State of California. Pursuant to the provisions of the California Code of Civil Procedure §2025.220 and 2026.620 the deposition will also be videotaped and/or recorded for use as evidence in this action, at trial, or for such other purposes as permitted. Plaintiff reserves the right to use the videotaped and/or recorded deposition at the trial of this matter and in any other evidentiary hearing or proceedings where oral testimony may be admitted into evidence. The deposition testimony may also be recorded through an instant visual display of the testimony, of which a rough draft of the testimony will be requested, as authorized by Code of Civil Procedure §2025.020.

### **Basis to play the expert video deposition at any time is: Section 2025.620**

Section 2025.620 subdivision (d) permits a party to use the **video deposition** of an expert at **any time**, regardless of whether the expert is available to testify, will testify, or has testified, so long as proper notice was given.

### **Give the Court Time To Rule:**

Must Designate the video and allow time to rule. We do this during motions in limine.

Section § 2025.340, subdivision (m) “A party intending to offer an audio or video recording of a deposition in evidence under section 2025.620 shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered. That notice shall be given within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio or video record of deposition testimony that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition recording be prepared for use at the trial or hearing. The original audio or video record of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering an audio or video recording of that testimony under Section 2025.620 shall accompany that offer with a stenographic transcript prepared from that recording.”

We call the motion “Motion to Use Video Depositions at Trial.” Check with the court to see if the judge has any particular preference for the video designations and transcript.

**All Parties to the Case can be played at any time. Section § 2025.620(b): party depositions**

Subdivision (b) is a crucial tool for the use of a deposition at trial. This section allows you to use a deposition “of a party . . . , or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or [person most qualified] designee under Section 2025.230 of a party” regardless of the deponent’s availability to testify. (§ 2025.620, subd. (b).) Thus, you can use a deposition for any purpose – including using the deposition of one witness in the cross-examination of another witness – so long as the deponent was an officer, etc. at the time the deposition was taken.