

Code of Civil Procedure sections 2016.020, 2031.010, 2031.020, 2031.030, 2031.040, 2031.050, 2031.060, 2031.210, 2031.220, 2031.230, 2031.240, 2031.250, 2031.260, 2031.270, 2031.280, 2031.290, 2031.300, 2031.310, and 2031.320 would be amended, and sections 1985.8 and 2031.285 would be added, to read as follows:

1 **§ 2016.020.** As used in this title:

- 2
- 3 (a) “Action” includes a civil action and a special proceeding of a civil nature.
- 4
- 5 (b) “Court” means the trial court in which the action is pending, unless otherwise
- 6 specified.
- 7
- 8 (c) “Document” and “writing” mean a writing, as defined in Section 250 of the
- 9 Evidence Code.
- 10
- 11 (d) “Electronic” means relating to technology having electrical, digital,
- 12 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 13
- 14 (e) “Electronically stored information” means information that is stored in an
- 15 electronic medium.

16

17 **§ 2031.010**

- 18
- 19 (a) Any party may obtain discovery within the scope delimited by Chapters 2
- 20 (commencing with Section 2017.010) and 3 (commencing with Section
- 21 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing
- 22 with Section 2019.010), by inspecting, copying, testing, or sampling
- 23 documents, tangible things, ~~and~~ land or other property, and electronically
- 24 stored information ~~that are~~ in the possession, custody, or control of any other
- 25 party to the action.
- 26
- 27 (b) A party may demand that any other party produce and permit the party
- 28 making the demand, or someone acting on that party’s behalf, to inspect and
- 29 to copy a document that is in the possession, custody, or control of the party
- 30 on whom the demand is made.
- 31
- 32 (c) A party may demand that any other party produce and permit the party
- 33 making the demand, or someone acting on the party’s behalf, to inspect and
- 34 to photograph, test, or sample any tangible things that are in the possession,
- 35 custody, or control of the party on whom the demand is made.

1
2 (d) A party may demand that any other party allow the party making the demand,
3 or someone acting on that party's behalf, to enter on any land or other
4 property that is in the possession, custody, or control of the party on whom
5 the demand is made, and to inspect and to measure, survey, photograph, test,
6 or sample the land or other property, or any designated object or operation on
7 it.

8
9 (e) A party may demand that any other party produce and permit the party
10 making the demand, or someone acting on that party's behalf, to inspect,
11 copy, test, or sample electronically stored information in the possession,
12 custody, or control of the party on whom the demand is made.

13
14 **§ 2031.020**

15
16 (a) A defendant may make a demand for inspection, copying, testing, or
17 sampling without leave of court at any time.

18
19 (b) A plaintiff may make a demand for inspection, copying, testing, or sampling
20 without leave of court at any time that is 10 days after the service of the
21 summons on, or in unlawful detainer actions within five days after service of
22 the summons on or appearance by, the party to whom the demand is directed,
23 whichever occurs first.

24
25 (c) Notwithstanding subdivision (b), in an unlawful detainer action or other
26 proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of
27 Part 3, a plaintiff may make a demand for inspection, copying, testing, or
28 sampling without leave of the court at any time that is five days after service
29 of the summons on, or appearance by, the party to whom the demand is
30 directed, whichever occurs first.

31
32 (d) Notwithstanding subdivisions (b) and (c), on motion with or without notice,
33 the court, for good cause shown, may grant leave to a plaintiff to make ~~a~~ a
34 demand for inspection, copying, testing, or sampling ~~demand~~ at an earlier
35 time.

36
37 **§ 2031.030**

38
39 (a) A party demanding ~~a~~ inspection, copying, testing, or sampling shall number
40 each set of demands consecutively. A party demanding inspection, copying,
41 testing, or sampling of electronically stored information may specify the form
42 or forms in which each type of electronically stored information is to be
43 produced.

1
2 (b) In the first paragraph immediately below the title of the case, there shall
3 appear the identity of the demanding party, the set number, and the identity
4 of the responding party.

5
6 (c) Each demand in a set shall be separately set forth, identified by number or
7 letter, and shall do all of the following:

- 8
9 (1) Designate the documents, tangible things, ~~or~~ land or other property, or
10 electronically stored information to be inspected, copied, tested, or
11 sampled either by specifically describing each individual item or by
12 reasonably particularizing each category of item.
- 13
14 (2) Specify a reasonable time for the inspection, copying, testing, or
15 sampling that is at least 30 days after service of the demand, unless the
16 court for good cause shown has granted leave to specify an earlier date.
17 In an unlawful detainer action or other proceeding under Chapter 4
18 (commencing with Section 1159) of Title 3 of Part 3, the demand shall
19 specify a reasonable time for the inspection, copying, testing, or
20 sampling that is at least five days after service of the demand, unless the
21 court, for good cause shown, has granted leave to specify an earlier date.
- 22
23 (3) Specify a reasonable place for making the inspection, copying, testing,
24 or sampling and performing any related activity.
- 25
26 (4) Specify any inspection, copying, testing, sampling, or related activity
27 that is being demanded ~~in addition to an inspection and copying~~, as well
28 as the manner in which that ~~related~~ activity will be performed, and
29 whether that activity will permanently alter or destroy the item involved.

30
31 **§ 2031.040**

32
33 The party making a demand for ~~demanding an~~ inspection, copying, testing, or
34 sampling shall serve a copy of the ~~inspection~~ demand on the party to whom it is
35 directed and on all other parties who have appeared in the action.

36
37 **§ 2031.050**

38
39 (a) In addition to the demands for inspection, copying, testing, or sampling
40 ~~demands~~ permitted by this chapter, a party may propound a supplemental
41 demand to inspect, copy, test, or sample any later acquired or discovered
42 documents, tangible things, ~~or~~ land or other property, or electronically stored

1 information that are in the possession, custody, or control of the party on
2 whom the demand is made.

3
4 (b) A party may propound a supplemental demand for inspection, copying,
5 testing, or sampling demand twice before the initial setting of a trial date,
6 and, subject to the time limits on discovery proceedings and motions
7 provided in Chapter 8 (commencing with Section 2024.010), once after the
8 initial setting of a trial date.

9
10 (c) Notwithstanding subdivisions (a) and (b), on motion, for good cause shown,
11 the court may grant leave to a party to propound an additional number of
12 supplemental demands for inspection, copying, testing, or sampling.

13
14 **§ 2031.060**

15
16 (a) When an inspection, copying, testing, or sampling of documents, tangible
17 things, ~~or~~ places, or electronically stored information has been demanded, the
18 party to whom the demand has been directed, and any other party or affected
19 person or organization, may promptly move for a protective order. This
20 motion shall be accompanied by a meet and confer declaration under Section
21 2016.040.

22
23 (b) The court, for good cause shown, may make any order that justice requires to
24 protect any party or other natural person or organization from unwarranted
25 annoyance, embarrassment, or oppression, or undue burden and expense.
26 This protective order may include, but is not limited to, one or more of the
27 following directions:

28
29 (1) That all or some of the items or categories of items in the ~~inspection~~
30 demand need not be produced or made available at all.

31
32 (2) That the time specified in Section 2030.260 to respond to the set of
33 ~~inspection~~ demands, or to a particular item or category in the set, be
34 extended.

35
36 (3) That the place of production be other than that specified in the
37 ~~inspection~~ demand.

38
39 (4) That the inspection, copying, testing, or sampling be made only on
40 specified terms and conditions.

41

1 (5) That a trade secret or other confidential research, development, or
2 commercial information not be disclosed, or be disclosed only to
3 specified persons or only in a specified way.
4

5 (6) That the items produced be sealed and thereafter opened only on order
6 of the court.
7

8 (c) The party or affected person seeking a protective order regarding the
9 production, inspection, copying, testing, or sampling of electronically stored
10 information on the basis that such information is from a source that is not
11 reasonably accessible because of undue burden or expense bears the burden
12 of so demonstrating.
13

14 (d) If the party or affected person from whom discovery of electronically stored
15 information is sought establishes that the information is from a source that is
16 not reasonably accessible because of undue burden or expense, the court may
17 nonetheless order discovery if the demanding party shows good cause,
18 subject to any limitations imposed under subdivision (f).
19

20 (e) If the court finds good cause for the production of electronically stored
21 information from a source that is not reasonably accessible, the court may set
22 conditions for the discovery of the electronically stored information,
23 including allocation of the expense of discovery.
24

25 (f) The court shall limit the frequency or extent of discovery of electronically
26 stored information, even from a source that is reasonably accessible, if the
27 court determines:
28

29 (1) That it is possible to obtain the information from some other source that
30 is more convenient, less burdensome, or less expensive;
31

32 (2) That the discovery sought is unreasonably cumulative or duplicative;
33

34 (3) That the party seeking discovery has had ample opportunity by
35 discovery in the action to obtain the information sought; or
36

37 (4) That the likely burden or expense of the proposed discovery outweighs
38 the likely benefit, taking into account the amount in controversy, the
39 resources of the parties, the importance of the issues in the litigation,
40 and the importance of the requested discovery in resolving the issues.
41

42 (e)(g) If the motion for a protective order is denied in whole or in part, the court
43 may order that the party to whom the demand was directed provide or permit

1 the discovery against which protection was sought on terms and conditions
2 that are just.

3
4 ~~(d)~~(h) The court shall impose a monetary sanction under Chapter 7 (commencing
5 with Section 2023.010) against any party, person, or attorney who
6 unsuccessfully makes or opposes a motion for a protective order, unless it
7 finds that the one subject to the sanction acted with substantial justification or
8 that other circumstances make the imposition of the sanction unjust.

9
10 (i) Notwithstanding subdivision (h), absent exceptional circumstances, the court
11 shall not impose sanctions on a party or its attorneys for failure to provide
12 electronically stored information lost, damaged, altered, or overwritten as the
13 result of the routine, good-faith operation of an electronic information
14 system. This subdivision shall not be construed to alter any obligation to
15 preserve discoverable information.

16
17 **§ 2031.210**

18
19 (a) The party to whom ~~an~~ a demand for inspection, copying, testing, or sampling
20 ~~demand~~ has been directed shall respond separately to each item or category
21 of item by any of the following:

22
23 (1) A statement that the party will comply with the particular demand for
24 inspection, copying, testing, or sampling by the date set for the
25 inspection, copying, testing or sampling pursuant to paragraph (2) of
26 subdivision (c) of Section 2031.030 and any related activities.

27
28 (2) A representation that the party lacks the ability to comply with the
29 demand for inspection, copying, testing, or sampling of a particular
30 item or category of item.

31
32 (3) An objection to the particular demand for inspection, copying, testing,
33 or sampling.

34
35 (b) In the first paragraph of the response immediately below the title of the case,
36 there shall appear the identity of the responding party, the set number, and
37 the identity of the demanding party.

38
39 (c) Each statement of compliance, each representation, and each objection in the
40 response shall bear the same number and be in the same sequence as the
41 corresponding item or category in the demand, but the text of that item or
42 category need not be repeated.

43

1 **§ 2031.220**

2
3 A statement that the party to whom ~~an~~ a demand for inspection, copying, testing,
4 or sampling demand has been directed will comply with the particular demand
5 shall state that the production, inspection, copying, testing, or sampling and related
6 activity demanded will be allowed either in whole or in part, and that all
7 documents or things in the demanded category that are in the possession, custody,
8 or control of that party and to which no objection is being made will be included in
9 the production.

10
11 **§ 2031.230**

12
13 A representation of inability to comply with the particular demand for inspection,
14 copying, testing, or sampling shall affirm that a diligent search and a reasonable
15 inquiry has been made in an effort to comply with that demand. This statement
16 shall also specify whether the inability to comply is because the particular item or
17 category has never existed, has been destroyed, has been lost, misplaced, or stolen,
18 or has never been, or is no longer, in the possession, custody, or control of the
19 responding party. The statement shall set forth the name and address of any natural
20 person or organization known or believed by that party to have possession,
21 custody, or control of that item or category of item.

22
23 **§ 2031.240**

- 24
25 (a) If only part of an item or category of item in ~~an inspection demand~~ a demand
26 for inspection, copying, testing, or sampling is objectionable, the response
27 shall contain a statement of compliance, or a representation of inability to
28 comply with respect to the remainder of that item or category.
29
30 (b) If the responding party objects to the demand for inspection, copying, testing,
31 or sampling of an item or category of item, the response shall do both of the
32 following:
33
34 (1) Identify with particularity any document, tangible thing, ~~or~~ land, or
35 electronically stored information falling within any category of item in
36 the demand to which an objection is being made.
37
38 (2) Set forth clearly the extent of, and the specific ground for, the objection.
39 If an objection is based on a claim of privilege, the particular privilege
40 invoked shall be stated. If an objection is based on a claim that the
41 information sought is protected work product under Chapter 4
42 (commencing with Section 2018.010), that claim shall be expressly
43 asserted.

1
2 **§ 2031.250**

- 3
4 (a) The party to whom the demand for inspection, copying, testing, or sampling
5 is directed shall sign the response under oath unless the response contains
6 only objections.
7
8 (b) If that party is a public or private corporation or a partnership or association
9 or governmental agency, one of its officers or agents shall sign the response
10 under oath on behalf of that party. If the officer or agent signing the response
11 on behalf of that party is an attorney acting in that capacity for a party, that
12 party waives any lawyer-client privilege and any protection for work product
13 under Chapter 4 (commencing with Section 2018.010) during any subsequent
14 discovery from that attorney concerning the identity of the sources of the
15 information contained in the response.
16
17 (c) The attorney for the responding party shall sign any responses that contain an
18 objection.
19

20 **§ 2031.260**

- 21
22 (a) Within 30 days after service of ~~an inspection~~ a demand for inspection,
23 copying, testing, or sampling, the party to whom the demand is directed shall
24 serve the original of the response to it on the party making the demand, and a
25 copy of the response on all other parties who have appeared in the action,
26 unless on motion of the party making the demand, the court has shortened the
27 time for response, or unless on motion of the party to whom the demand has
28 been directed, the court has extended the time for response.
29
30 (b) Notwithstanding subdivision (a), in an unlawful detainer action or other
31 proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of
32 Part 3, the party to whom ~~an inspection~~ a demand for inspection, copying,
33 testing, or sampling is directed shall have at least five days from the date of
34 service of the demand to respond, unless on motion of the party making the
35 demand, the court has shortened the time for the response, or unless on
36 motion of the party to whom the demand has been directed, the court has
37 extended the time for response.
38

39 **§ 2031.270**

- 40
41 (a) The party demanding ~~an~~ the inspection, copying, testing, or sampling and the
42 responding party may agree to extend the date for the inspection, copying,
43 testing, or sampling or the time for service of a response to a set of

1 ~~inspection~~ demands, or to particular items or categories of items in a set, to a
2 date or dates beyond those provided in Sections 2031.010, 2031.210,
3 2031.260, and 2031.280.

4
5 (b) This agreement may be informal, but it shall be confirmed in a writing that
6 specifies the extended date for the inspection, copying, testing, or sampling
7 or the service of a response.

8
9 (c) Unless this agreement expressly states otherwise, it is effective to preserve to
10 the responding party the right to respond to any item or category of item in
11 the demand to which the agreement applies in any manner specified in
12 Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

13
14 **§ 2031.280**

15
16 (a) Any documents produced in response to ~~an inspection~~ a demand for
17 inspection, copying, testing, or sampling shall either be produced as they are
18 kept in the usual course of business, or be organized and labeled to
19 correspond with the categories in the demand.

20
21 (b) The documents shall be produced on the date specified in the ~~inspection~~
22 demand pursuant to paragraph (2) of subdivision (c) of Section 2031.030,
23 unless an objection has been made to that date. If the date for inspection has
24 been extended pursuant to Section 2031.270, the documents shall be
25 produced on the date agreed to pursuant to that section.

26
27 (c) If a party responding to a demand for production of electronically stored
28 information objects to a specified form for producing the information, or if
29 no form is specified in the demand, the responding party shall state in its
30 response the form in which it intends to produce each type of the
31 information.

32
33 (d) Unless the parties otherwise agree or the court otherwise orders:

34
35 (1) If a demand for production does not specify a form or forms for
36 producing a type of electronically stored information, the responding
37 party shall produce the information in the form or forms in which it is
38 ordinarily maintained or in a form that is reasonably usable; and

39
40 (2) A party need not produce the same electronically stored information in
41 more than one form.
42

1 (e)(e) If necessary, the responding party at the reasonable expense of the
2 demanding party shall, through detection devices, translate any data
3 compilations included in the demand into reasonably usable form.
4

5 **§ 2031.285**
6

7 (a) If electronically stored information produced in discovery is subject to a
8 claim of privilege or of protection as attorney work product, the party making
9 the claim may notify any party that received the information of the claim and
10 the basis for the claim.

11
12 (b) After being notified of a claim of privilege or of protection under subdivision
13 (a), a party that received the information shall immediately sequester the
14 information and either return the specified information and any copies that
15 may exist or present the information to the court conditionally under seal for
16 a determination of the claim.

17
18 (c) Prior to the resolution of the motion brought under subdivision (d), a party
19 shall be precluded from using or disclosing the specified information until the
20 claim of privilege is resolved. If the party that received the information
21 disclosed it before being notified, after being notified of a claim of privilege
22 or of protection under subdivision (a), the receiving party shall immediately
23 take reasonable steps to retrieve the information.

24
25 (d) Within 30 days of receiving a claim of privilege or protection under
26 subdivision (a), the receiving party may by a motion present the information
27 to the court by lodging it conditionally under seal for a determination of the
28 claim if it contests the legitimacy of the claim of privilege or protection. The
29 receiving party shall preserve the information and keep it confidential, and is
30 precluded from using the information in any manner, until the claim is
31 resolved.

32
33 **§ 2031.290**
34

35 (a) The demand for inspection, copying, testing, or sampling demand and the
36 response to it shall not be filed with the court.

37
38 (b) The party demanding an inspection, copying, testing, or sampling shall retain
39 both the original of the inspection demand, with the original proof of service
40 affixed to it, and the original of the sworn response until six months after
41 final disposition of the action. At that time, both originals may be destroyed,
42 unless the court, on motion of any party and for good cause shown, orders
43 that the originals be preserved for a longer period.

1
2 **§ 2031.300**

3
4 If a party to whom ~~an~~ a demand for inspection, copying, testing, or sampling
5 ~~demand~~ is directed fails to serve a timely response to it, the following rules apply:
6

7 (a) The party to whom the demand for inspection, copying, testing, or sampling
8 ~~demand~~ is directed waives any objection to the demand, including one based
9 on privilege or on the protection for work product under Chapter 4
10 (commencing with Section 2018.010). The court, on motion, may relieve that
11 party from this waiver on its determination that both of the following
12 conditions are satisfied:

13
14 (1) The party has subsequently served a response that is in substantial
15 compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and
16 2031.280.

17
18 (2) The party's failure to serve a timely response was the result of mistake,
19 inadvertence, or excusable neglect.
20

21 (b) The party making the demand may move for an order compelling response to
22 the ~~inspection~~ demand.
23

24 (c) The court shall impose a monetary sanction under Chapter 7 (commencing
25 with Section 2023.010) against any party, person, or attorney who
26 unsuccessfully makes or opposes a motion to compel a response to ~~an~~ a
27 demand for inspection, copying, testing, or sampling demand, unless it finds
28 that the one subject to the sanction acted with substantial justification or that
29 other circumstances make the imposition of the sanction unjust. If a party
30 then fails to obey the order compelling a response, the court may make those
31 orders that are just, including the imposition of an issue sanction, an evidence
32 sanction, or a terminating sanction under Chapter 7 (commencing with
33 Section 2023.010). In lieu of or in addition to this sanction, the court may
34 impose a monetary sanction under Chapter 7 (commencing with Section
35 2023.010).
36

37 (d) Notwithstanding subdivision (c), absent exceptional circumstances, the court
38 shall not impose sanctions on a party or its attorneys for failure to provide
39 electronically stored information lost, damaged, altered, or overwritten as the
40 result of the routine, good-faith operation of an electronic information
41 system. This subdivision shall not be construed to alter any obligation to
42 preserve discoverable information.
43

1 § 2031.310

2
3 (a) On receipt of a response to ~~an~~ a demand for inspection, copying, testing, or
4 sampling demand, the demanding party demanding an inspection may move
5 for an order compelling further response to the demand if the demanding
6 party deems that any of the following apply:

7
8 (1) A statement of compliance with the demand is incomplete.

9
10 (2) A representation of inability to comply is inadequate, incomplete, or
11 evasive.

12
13 (3) An objection in the response is without merit or too general.

14
15 (b) A motion under subdivision (a) shall comply with both of the following:

16
17 (1) The motion shall set forth specific facts showing good cause justifying
18 the discovery sought by the ~~inspection~~ demand.

19
20 (2) The motion shall be accompanied by a meet and confer declaration
21 under Section 2016.040.

22
23 (c) Unless notice of this motion is given within 45 days of the service of the
24 response, or any supplemental response, or on or before any specific later
25 date to which the demanding party and the responding party have agreed in
26 writing, the demanding party waives any right to compel a further response to
27 the ~~inspection~~ demand.

28
29 (d) In a motion under subdivision (a) relating to the production of electronically
30 stored information, the party or affected person objecting to or opposing the
31 production, inspection, copying, testing, or sampling of electronically stored
32 information on the basis that such information is from a source that is not
33 reasonably accessible because of the undue burden or expense bears the
34 burden of so demonstrating.

35
36 (e) If the party or affected person from whom discovery of electronically stored
37 information is sought establishes that the information is from a source that is
38 not reasonably accessible because of undue burden or expense, the court may
39 nonetheless order discovery if the demanding party shows good cause,
40 subject to any limitations imposed under subdivision (g).

41
42 (f) If the court finds good cause for the production of electronically stored
43 information from a source that is not reasonably accessible, the court may set

1 conditions for the discovery of the electronically stored information,
2 including allocation of the expense of discovery.

3
4 (g) The court shall limit the frequency or extent of discovery of electronically
5 stored information, even from a source that is reasonably accessible, if the
6 court determines:

7
8 (1) That it is possible to obtain the information from some other source that
9 is more convenient, less burdensome, or less expensive;

10
11 (2) That the discovery sought is unreasonably cumulative or duplicative;

12
13 (3) That the party seeking discovery has had ample opportunity by
14 discovery in the action to obtain the information sought; or

15
16 (4) That the likely burden or expense of the proposed discovery outweighs
17 the likely benefit, taking into account the amount in controversy, the
18 resources of the parties, the importance of the issues in the litigation,
19 and the importance of the requested discovery in resolving the issues.

20
21 ~~(d)~~(h) The court shall impose a monetary sanction under Chapter 7 (commencing
22 with Section 2023.010) against any party, person, or attorney who
23 unsuccessfully makes or opposes a motion to compel further response to an
24 ~~inspection~~ a demand, unless it finds that the one subject to the sanction acted
25 with substantial justification or that other circumstances make the imposition
26 of the sanction unjust.

27
28 ~~(e)~~(i) If a party fails to obey an order compelling further response, the court may
29 make those orders that are just, including the imposition of an issue
30 sanction, an evidence sanction, or a terminating sanction under Chapter 7
31 (commencing with Section 2023.010). In lieu of or in addition to that
32 sanction, the court may impose a monetary sanction under Chapter 7
33 (commencing with Section 2023.010).

34
35 (j) Notwithstanding subdivisions (h) and (i), absent exceptional circumstances,
36 the court shall not impose sanctions on a party or its attorneys for failure to
37 provide electronically stored information lost, damaged, altered, or
38 overwritten as the result of the routine, good-faith operation of an electronic
39 information system. This subdivision shall not be construed to alter any
40 obligation to preserve discoverable information.

41
42 **§ 2031.320**

43

- 1 (a) If a party filing a response to a demand for inspection, copying, testing, or
2 sampling under Sections 2031.210, 2031.220, 2031.230, 2031.240, and
3 2031.280 thereafter fails to permit the inspection, copying, testing, or
4 sampling in accordance with that party's statement of compliance, the
5 demanding party ~~demanding the inspection~~ may move for an order
6 compelling compliance.
7
- 8 (b) The court shall impose a monetary sanction under Chapter 7 (commencing
9 with Section 2023.010) against any party, person, or attorney who
10 unsuccessfully makes or opposes a motion to compel compliance with ~~an~~
11 inspection a demand, unless it finds that the one subject to the sanction acted
12 with substantial justification or that other circumstances make the imposition
13 of the sanction unjust.
14
- 15 (c) If a party then fails to obey an order compelling inspection, copying, testing,
16 or sampling, the court may make those orders that are just, including the
17 imposition of an issue sanction, an evidence sanction, or a terminating
18 sanction under Chapter 7 (commencing with Section 2023.010). In lieu of or
19 in addition to that sanction, the court may impose a monetary sanction under
20 Chapter 7 (commencing with Section 2023.010).
21
- 22 (d) Notwithstanding subdivisions (b) and (c), absent exceptional circumstances,
23 the court shall not impose sanctions on a party or its attorneys for failure to
24 provide electronically stored information lost, damaged, altered, or
25 overwritten as the result of the routine, good-faith operation of an electronic
26 information system. This subdivision shall not be construed to alter any
27 obligation to preserve discoverable information.
28

29 **§ 1985.8**
30

- 31 (a) A subpoena in a civil proceeding may require that electronically stored
32 information, as defined in Section 2016.020, be produced and that the party
33 -serving the subpoena, or someone acting on the party's request, be permitted
34 to inspect, copy, test, or sample the information. Any subpoena seeking
35 electronically stored information shall comply with the requirements of
36 Chapter 2 of Title 3 of Part 4 of the Code of Civil Procedure.
37
- 38 (b) A party serving a subpoena requiring production of electronically stored
39 information may specify the form or forms in which each type of information
40 is to be produced.
41
- 42 (c) Unless the subpoenaing party and the subpoenaed person otherwise agree or
43 the court otherwise orders:

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(1) If a subpoena requiring production of electronically stored information does not specify a form or forms for producing a type of electronically stored information, the person subpoenaed shall produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable; and

(2) A subpoenaed person need not produce the same electronically stored information in more than one form.

(d) A subpoenaed person opposing the production, inspection, copying, testing, or sampling of electronically stored information on the basis that such information is from a source that is not reasonably accessible because of the undue burden or expense bears the burden of so demonstrating.

(e) If the person from whom discovery of electronically stored information is subpoenaed establishes that the information is from a source that is not reasonably accessible because of undue burden or expense, the court may nonetheless order discovery if the subpoenaing party shows good cause, subject to any limitations imposed under subdivision (h).

(f) 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.

(g) If necessary, the subpoenaed person at the reasonable expense of the subpoenaing party shall, through detection devices, translate any data compilations included in the subpoena into reasonably usable form.

(h) 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:

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

(2) That the discovery sought is unreasonably cumulative or duplicative;

(3) That the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

1 (4) That the likely burden or expense of the proposed discovery outweighs
2 the likely benefit, taking into account the amount in controversy, the
3 resources of the parties, the importance of the issues in the litigation,
4 and the importance of the requested discovery in resolving the issues.
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6 (i) If a subpoenaed person notifies the subpoenaing party that electronically
7 stored information produced pursuant to a subpoena is subject to a claim of
8 privilege or of protection as attorney work product under section 2031.285,
9 the provisions of that section shall apply.
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11 (j) A party serving a subpoena requiring production of electronically stored
12 information shall take reasonable steps to avoid imposing undue burden or
13 expense on a person subject to the subpoena.
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15 (k) An order of the court requiring compliance with a subpoena issued under this
16 section shall protect a person who is neither a party nor a party's officer from
17 undue burden or expense resulting from compliance.
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19 (l) Absent exceptional circumstances, the court shall not impose sanctions on a
20 subpoenaed person or its attorneys for failure to provide electronically stored
21 information lost, damaged, altered, or overwritten as the result of the routine,
22 good-faith operation of an electronic information system. This subdivision
23 shall not be construed to alter any obligation to preserve discoverable
24 information.
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