



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

Title	Agenda Item Type
Civil Discovery: Form Interrogatories for Construction Litigation	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Approve new form DISC-005	January 1, 2013
Recommended by	Date of Report
Civil and Small Claims Advisory Committee Hon. Dennis M. Perluss, Chair	August 10, 2012
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Executive Summary

The Civil and Small Claims Advisory Committee recommends that the Judicial Council approve a new set of form interrogatories designed specifically for use in litigating construction and construction defect cases. The Judicial Council forms currently include interrogatories for general use in civil cases as well as specialized interrogatories for certain other types of civil cases, but none specifically for construction litigation. The proposed *Form Interrogatories—Construction Litigation* (form DISC-005) include standardized interrogatories on topics unique to construction litigation as well as several broader topics carried over from the general form interrogatories for civil cases.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2013, approve *Form Interrogatories—Construction Litigation* (form DISC-005).

A copy of the proposed form is attached at pages 11–20.

Previous Council Action

As the result of Judicial Council–sponsored legislation, Code of Civil Procedure section 2033.5 (now renumbered as section 2033.710) was amended effective January 1, 2002, to broaden the council’s authority to approve form interrogatories for any category of civil actions that it deems appropriate. The council has approved a set of form interrogatories for general use in civil cases, a set for use in limited civil cases, and specialized sets for unlawful detainer, family law, and employment law matters. The most recent form interrogatories approved by the council were those for employment law cases, effective January 1, 2002, and for family law cases, effective January 1, 2006.

Rationale for Recommendation

Background

The proposed interrogatories have been in development by the committee for several years, at the request of and with initial assistance from a group composed of attorneys specializing in construction litigation and organized by a discovery referee.¹ That group saw a need for standardized interrogatories to address issues that arise frequently in construction defect cases—form interrogatories exist for general use in civil cases and for certain types of specialized cases, but none specifically for use in construction-related litigation. The group developed proposed form interrogatories and presented the form to the committee for its consideration in 2009.

As the committee worked on the proposal through 2010 and 2011, the Consumer Attorneys of California (CAOC) objected to the committee that the proposed form interrogatories would not be helpful, contending that the format would overly burden plaintiffs in construction defect cases. The committee considered CAOC’s objections but disagreed, concluding that form interrogatories would prove useful in construction litigation, particularly in smaller cases. The committee noted that discovery, including interrogatories, is permitted in construction defect cases and concluded that specialized form interrogatories could provide a standard format to help keep discovery questions focused on and applicable to construction-specific issues. In complex multiparty cases, where discovery is often stayed initially and then directed by the court or a discovery referee under a case management order, use of the construction form interrogatories would be permitted only after a finding of good cause by the court, limiting their potential abuse. The committee concluded that the standardization of discovery requests with form interrogatories is likely to help both plaintiffs and defendants as well as the courts by making discovery more predictable, thus decreasing the number and complexity of any associated motions to compel.

¹ The group comprised three plaintiff’s attorneys, three attorneys who represent developers, three who represent subcontractors, two insurance coverage attorneys specializing in construction litigation, one attorney who represents architects, and one who represents public agencies in contracting matters.¹

Once the committee approved the proposal in principle, and had edited and refined the set of interrogatories originally submitted, it worked with members of CAOC and defense attorneys specializing in construction litigation along with the discovery referee who had organized the original project² to further revise the content of the form interrogatories. That group reached consensus on almost all of the content of the proposed form, with the committee making the final decisions on the few minor points that remained in dispute.

The Proposal

The proposed *Form Interrogatories—Construction Litigation* (form DISC-005) follows the same format as the other Judicial Council form interrogatories. The instructions at the beginning are essentially the same as those of the other forms, with two exceptions:

- Use of the proposed form is limited to smaller cases except with leave of court. In residential construction cases, the proposed form interrogatories may not be used unilaterally in actions that involve more than five residential units. In complex cases, the form may be used only after a court’s finding of good cause.
- The instructions recognize that a document depository is created in many construction cases, so form permits interrogatory responses that point to specific documents in such a depository that contain the information sought.

Other notable aspects of the proposed construction form interrogatories include the following:

- As with other civil form interrogatories, parties may attach additional individually crafted interrogatories should they wish.
- The definitions section in the instructions of the construction form interrogatories parallel the list in the general civil form interrogatories but add or substitute terms specific to construction litigation. Because “incident” would be confusing as a defined term in construction interrogatories, that term has been replaced with “construction claim” and “construction defect claim”; the asking party still has the option of crafting custom definitions for these two defined terms, just as with “Incident” in the civil interrogatories.
- The proposed construction interrogatories are intended to serve as a single integral set of interrogatories rather than as a discrete set of specialty interrogatories for use as an addition or supplement to other form interrogatories, so they include interrogatories on several topics included in the general civil form interrogatories, with several of those tailored to more specifically address construction cases.
- None of the questions concerning personal injury from the general form interrogatories are included in the proposed form. Such interrogatories would rarely be applicable in a construction case, and the committee concluded that their presence in this set would unnecessarily complicate the form.

² The group included Mr. Fred Adelman and Mr. Ron Hartman, CAOC members with expertise in construction litigation; Ms. Eileen Booth and Mr. Glenn Barger, from the defense bar; and Ms. Katherine Gallo, a private discovery referee and mediator.)

- There is a signature line at the end of the interrogatories, for counsel or a party without counsel to sign and date the form.³

Comments, Alternatives Considered, and Policy Implications

The proposed *Form Interrogatories—Construction Litigation* (form DISC-005) circulated for public comment in spring 2012. In addition to welcoming more general responses, the invitation to comment specifically requested input on the issues of whether the proposed form interrogatories are appropriate to begin with and, if so, whether their use should be limited as indicated in the instructions on the proposed form or in other ways. Comments were particularly requested on whether use of the form interrogatories in residential construction cases should be limited to cases involving 5 or fewer residential units or permitted in those with up to 10 units.

The committee received 261 comments on the proposal. Eight commentators—all lawyers or law firms—disagreed with the proposal in its entirety. Six commentators (5 individual attorneys plus the Orange County Bar Association) conditionally agreed with the proposal with certain modifications.

One court provided a comment, the Superior Court of San Diego, which agreed with the proposal in its entirety without further elaboration. The remaining 247 commentators also agreed with the proposal, with several suggesting minor changes to the text and one who commented that the form will be useless if limited to small cases. Of those comments agreeing with the proposal, more than 90 were from individual lawyers, law firms, or attorney organizations, including the State Bar’s Committee on the Administration of Justice, the Association of Defense Counsel of Northern California and Nevada, the Association of Southern California Defense Counsel, the California Defense Counsel, and the Santa Monica City Attorney’s Office. The remaining 150 or so comments in support came primarily from contractors and contractors’ trade associations.

The full text of all the comments appears in two charts, respectively labeled A and B and attached to this memo beginning at page 21. The comment by the California Professional Association of Specialty Contractors (number 27 on Comment Chart A) was itself expressly supported by 71 other commentators. Those 71 comments have all been placed in Comment Chart B (beginning at page 82), so that Comment Chart A will be easier to read.⁴

The committee reviewed and considered every comment received and has responded to each in the comments charts. Principal comments and the committee’s responses to them are summarized and discussed below.

³ The committee intends to eventually recommend revising all current form interrogatories to include a signature line, making this suggestion only at such time as other changes are made to each given forms.

⁴ All individual comments referred to in this report can be found listed alphabetically by submitter’s name in Comment Chart A.

1. Comments opposed to the proposal in its entirety

Eight lawyers and law firms submitted comments, some extensive, opposing the approval of the proposed form interrogatories.⁵ The committee considered all the points raised in opposition. The principal objections, each raised in somewhat different ways by most of the seven objectors, and the committee's responses are summarized below.

Burden on plaintiffs. A recurring objection was that the new form interrogatories were intended to inundate plaintiffs and plaintiffs' attorneys and so deter valid claims. Several commentators noted that responding to these interrogatories would impose more work and expense on plaintiff homeowners to provide information in response to interrogatories that is now generally provided in expert witness discovery rather than discovery directly from the plaintiff.

The committee considered this objection but concluded that the form interrogatories would not generally be overly burdensome on plaintiffs, especially in smaller cases. Importantly, the committee noted that discovery by interrogatory is already permitted by law in civil actions, including construction defect litigation.⁶ Currently, the general civil form interrogatories can be used in these cases, but those interrogatories are not focused on issues found in construction litigation, and can be ambiguous or inapplicable in that context. Hence, the new form does not add anything new to the currently authorized means of discovery, but instead refines what is already allowed by law. Plaintiffs are subject to discovery in construction cases just as in other litigation, unless a stay is in effect, and a standardized set of interrogatories will benefit all parties in the long run.

The committee recognizes and agrees with the concern raised by several commentators about the potential for overly burdensome and duplicative discovery should the new form interrogatories be used in large cases with dozens of parties. For this reason, the committee proposes limiting by size the cases in which the new form interrogatories may be used. In actions involving homeowners, the form may only be used without prior permission of the court in cases with five or fewer residential units. In actions determined to be complex under rule 3.400 et seq. of the California Rules of Court a party must seek permission of the court on a showing of good cause before propounding the interrogatories.

Work product and mediation privilege. Six of the objecting commentators objected that the new form interrogatories would require the responding party to rely on expert opinions and hence require disclosure of information protected under the work product doctrine. One commentator went so far as to claim that the proposed form interrogatories are "an underhanded means of

⁵ The objectors to the proposal are attorney Brian Haydon, Law Offices of Douglas Harty, attorney Les Eng, LoCoco Smith APC, attorney Gerald Malanga, Milstein Adelman, LLP, Law Offices of Danil Monteleone, and Wesley A. Davis, APC. Most appear to be members of the plaintiff bar. Their comments are all set out in Comment Chart A.

⁶ One commentator noted that he was currently litigating a case in which more than 500 specially prepared interrogatories had been propounded. (See comment of attorney David A. Ericksen.)

obtaining information that opposing counsel is not entitled to because of the work product and mediation privilege.” (Milstein Adelman LLP.)

The committee disagrees with these objections. The majority of the interrogatories ask specific questions within the personal knowledge of the parties. Moreover, as in all discovery, responses may be provided based on the party’s knowledge at whatever stage the interrogatories are propounded. If a responding party believes an interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.

Similar objections could be made to permitting factual discovery in other kinds of civil cases where expert opinions frequently play a large role, such as medical malpractice or antitrust cases. But interrogatories, including the general civil form interrogatories, are permitted in such cases. If they prove to be overly burdensome or inappropriate in a particular case, an objection may be raised on that basis. In response to this objection, the committee again notes that the use of interrogatories is already permitted in construction defect litigation. The proposed form interrogatories are no more invasive of attorney work product or other privileges than individually crafted interrogatories or the general civil form interrogatories would be.

The committee does not intend these interrogatories to in any way change or narrow the law addressing discovery of privileged material or information. Indeed, concern that such privileges remain intact is expressly stated in the Instructions to All Parties on the first page of the proposed form, at section 1(d):

These form interrogatories are not to be interpreted as requiring any information that would invade the attorney-client privilege or be protected under the doctrines of attorney-work product or mediation confidentiality. Nor do these interrogatories require identification of any witnesses or documents protected under such privilege or doctrines or otherwise covered by Evidence Code section 1115 et seq. (regarding mediation) or Code of Civil Procedure section 2034.010 et seq. (regarding expert witnesses).

Use of case management order protocol. Most commentators objecting to the form interrogatories asserted that they are unnecessary because, according to the commentators, plaintiffs and defendants in most construction defect cases stipulate that discovery in the case be initially stayed and eventually proceed according to the court’s case management order (CMO).⁷ Under the agreed-to CMO, discovery is limited to that which is court-ordered and under the supervision of a private temporary judge appointed to act as discovery referee. The court-ordered timeline may provide for the sharing of plaintiffs’ expert reports and material before any other

⁷ Note that several comments in support cited the potential of reducing abuses of the case management order protocol as a helpful aspect of the form interrogatories; attorney Ted Wood goes into extensive detail (Comment Chart A, no. 184.)

discovery happens in the case and may provide that the expert information is shared within the context of mediation, cloaking it in a privilege that, according to the commentators, allows for a more free exchange of information. The objecting commentators supported the CMO-guided discovery process and protested that approval of the construction form interrogatories will somehow end or interfere with that process.

The committee disagrees with this objection, concluding that the current use of the CMO discovery process in some construction cases is not a reason to prevent the approval of construction form interrogatories. Nothing in this proposal would preclude use of the CMO discovery process in appropriate cases. In actions in which a discovery stay is in place, the stay would apply to this form just as it applies to all other means of discovery. In cases in which the parties have agreed that discovery will be guided by the CMO, the new form interrogatories would only be propounded if included in the CMO or approved by the judicial officer. In cases in which discovery is proceeding as part of a mediation process, the mediation privilege would still apply to information exchanged as part of that process.

Indeed, adoption of the form could assist in the cases proceeding under the CMO process, in that when interrogatories are included as part of that process, a set of form interrogatories will already be in existence for the judicial officer to approve or select from. More importantly, such interrogatories will be available for use in cases in which the CMO process is not employed for discovery. In those cases, parties and the courts will have the benefit of a set of standardized interrogatories to make discovery more predictable.

2. Comments on limitations of the use of the form

As circulated for comment, the proposed construction form interrogatories could only be used in residential construction cases without prior permission in smaller cases, involving five or fewer units. In cases determined by a court to be complex, no matter how many units are involved or whether the property is residential or commercial, the construction form interrogatories may be used only after the asking party has received permission of the court on a showing of good cause for their use. The invitation to comment asked for specific comments on these limitations.

In addition to the eight who objected to any use of construction form interrogatories, nine other commentators, all lawyers or law firms, responded to the specific issue of limitations on the use of the form. Four opined that the form interrogatories would be appropriate without prior court approval in residential cases involving as many as 10 units (i.e., larger cases than in the proposal as circulated; see comments of Cal Coast Construction Spec, Inc.; California Professional Association of Specialty Contractors; Law Offices of Katherine Gallo; and Skane Wilcox LLP). The five others each asserted that there was no compelling reason for *any* limitation based on the number of housing units involved in an action. (See comments of the State Bar's Committee on Administration of Justice (CAJ); attorneys John L. Boze, Jill Lifter, and Ted Wood; Mr. Wood

went so far as to say the forms would be *useless* within the proposed limitations and most useful to defendants in larger cases).

The committee disagreed with suggestions to permit unlimited use of the form interrogatories in all cases or in residential cases with more than five housing units. The group of plaintiff and defense attorneys working with the committee reached a compromise agreement while developing the content of the interrogatories that the form is to be propounded in residential housing actions without prior court permission only when the case involves five or fewer units. The committee agrees with that compromise as an appropriate limitation, at least for now, on the size of a case in which the form will be useful and not so burdensome that good cause need be shown to use it.

Commentators Boze, Wood, and the CAJ also proposed eliminating the current limitation on the use of the interrogatories in complex cases, which requires that a court find good cause before the form interrogatories may be propounded. Mr. Boze pointed out that the requirement of showing good cause before propounding interrogatories is a departure from the general principle under California law that discovery is self-executing. He and the CAJ opined that the burden should be the other way around—that a responding party in a complex case who objects to the use of the interrogatories (rather than the propounding party) should have the burden to seek the court’s aid. Mr. Wood commented on abuse of the current process of limiting discovery in larger cases via CMO discovery process and appointment of private discovery referees, and stated that the use of the form interrogatories in such cases would be helpful to defendants and should not require prior permission.

The committee declined this suggested modification in light of the concerns raised by others, particularly the plaintiff bar, as to the potential for discovery abuse through use of these form interrogatories in large or complex construction defect cases. The committee determined that the requirement of court approval before use of the form in such cases was the best way to address that concern. The committee may revisit this issue after the interrogatories are in effect for a few years, when it can better evaluate their use and effectiveness.

3. Comments on the formatting of the Defined Terms section

The invitation also requested specific comments as to the appearance of defined terms on the form, particularly whether the defined terms need be in all-capital letters to stand out or whether a boldface font was sufficient.⁸ The two responses received to this inquiry both favored eliminating the all-caps format for defined terms. (See comments of the Law Offices of Danil Monteleone; attorney Jill Lifter.) Attorney Monteleone strongly supported eliminating the capitalized terms to help make the form more accessible to dyslexic users. In light of these

⁸ Note that while other civil form interrogatories show defined terms in bold all-caps, the set most recently approved by the council, *Form Interrogatories—Family Law* (form FL-145), emphasizes defined terms with boldface only.

comments, the committee has revised the form to eliminate the all-caps convention, emphasizing the defined terms with boldface alone.

4. Comments on specific content of the form

Four commentators agreed with the proposed form if modified: attorneys Bill Bogdan, Deborah Coe, and Jill Lifter and the Orange County Bar Association. Other commentators, including the CAJ and Skane Wilcox LLP, agreed with the proposal but raised questions or offered suggestions regarding the form’s content. The committee considered all modifications suggested, adopting some and rejecting others. All the requested modifications and the committee’s response to each appear in the attached Comment Chart A. Among the more substantive modifications considered by the subcommittee:

- The committee modified section 2, Instructions to the Asking Party, to specify that the construction form interrogatories may be used only as an alternative to—but not in addition to—other form interrogatories. The other limitations on the use of the form, previously found only in the box under the caption, were also added to this section.
- The committee rejected a request by the CAJ to provide an option for the asking party to individually define the term “subject property.” The committee concluded that option to individually define “construction claim” or “construction defect claim” (see section 4(d) and (e)) provides sufficient flexibility for the asking party.
- The committee modified interrogatory 304.1, regarding insurance policies, to delete as generally unnecessary the request for identification of the claims person handling the claim and to add a new inquiry as to whether the indemnity limit of the policy is diminished by the cost of defense.
- The committee modified interrogatory 305.1, regarding loss or damage to the property, to add the question of when the responding party became aware of the loss or damage.
- The committee rejected suggestions to delete interrogatories 314.0 (Contracts) and 325.0 (Defendant’s Contentions) as problematic or troublesome. The committee notes that these interrogatories directly parallel interrogatories that have long existed in the general civil form interrogatories and rejecting their use in construction cases would call into question the validity of the current form interrogatories.

Implementation Requirements, Costs, and Operational Impacts

Because the construction form interrogatories are used by and between the parties, there should be little operational impact on the courts, aside from making motions to compel more predictable and possibly fewer in number.

Relevant Strategic Plan Goals and Operational Plan Objectives

The Legislature has expressly authorized the council to develop form interrogatories. See Code of Civil Procedure section 2033.710:

The Judicial Council shall develop and approve official form interrogatories and requests for admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact for use in any civil action in a state court based on personal injury, property damage, wrongful death, unlawful detainer, breach of contract, family law, or fraud and for any other civil actions the Judicial Council deems appropriate.

Approval of the proposed construction interrogatories will further Strategic Plan, Goal III: Modernization of management and administration; Operational Plan, Objective 5: Develop and implement effective trial case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of civil cases. See also Strategic Plan, Goal IV: Quality of Justice and Service to the Public; Operational Plan, Objective 1: Foster excellence in public service to ensure that all court users receive satisfactory services and outcomes.

Attachments

1. *Form Interrogatories—Construction Litigation* (form DISC-005), proposed, at pages 11–21.
2. Comment Chart A, at pages 22–87.
3. Comment Chart B (all comments expressing support of comment 26 in Comment Chart A), at pages 88–91.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>):	
TELEPHONE NO.:	FAX NO. :
E-MAIL ADDRESS:	
ATTORNEY FOR (<i>Name</i>):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
SHORT TITLE OF CASE:	
<p align="center">FORM INTERROGATORIES—CONSTRUCTION LITIGATION</p> <p>Asking Party:</p> <p>Answering Party:</p> <p>Set No.:</p>	CASE NUMBER:
<p align="center">These interrogatories are not intended for use in residential cases involving six or more single-family homes or housing units. In cases that have been deemed complex under rule 3.400 et seq. of the California Rules of Court, these interrogatories must not be used until the asking party has obtained the court’s approval on a showing of good cause.</p>	

Section 1. Instructions to All Parties

- (a) *Interrogatories* are written questions prepared by a party to an action and sent to another party in the action to be answered under oath in writing. The interrogatories in this form are approved for use in residential or commercial construction litigation cases, except as limited in section 2.
- (b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and cases construing those statutes.
- (c) These form interrogatories do not change existing law relating to interrogatories nor do they affect an answering party’s right to assert any privilege or make any objection, including but not limited to any objection recognized by statute or case law.
- (d) These form interrogatories are not to be interpreted as requiring any information that would invade the attorney-client privilege or be protected under the doctrines of attorney work product or mediation confidentiality. Nor do these interrogatories require identification of any witnesses or documents protected under such privileges or doctrines or otherwise covered by Evidence Code section 1115 et seq. (regarding mediation) or Code of Civil Procedure section 2034.010 et seq. (regarding expert witnesses).

Section 2. Instructions to the Asking Party

- (a) These interrogatories are designed for optional use by parties in construction litigation. An asking party who uses this form may not use other form interrogatories—such as *Form Interrogatories—General* (form DISC-001) or *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004) in the same action.
- (b) These interrogatories are not intended to be used in

- residential cases involving six or more single-family homes or housing units. In a case deemed complex under rule 3.400 et seq. of the California Rules of Court, these interrogatories must not be used until the asking party has obtained judicial approval on a showing of good cause.
- (c) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing only those interrogatories that are applicable to the case.
- (d) You may insert your own definition of **construction claim** or **construction defect claim** in section 4, but only where the action arises from a course of conduct or series of events occurring over a period of time.
- (e) The interrogatories under 325.0, Defendant’s Contentions, should not be used until the defendant/cross-defendant has had a reasonable opportunity to conduct an investigation or discovery of the other parties’ damages.
- (f) Additional non-form interrogatories may be attached.

Section 3. Instructions to the Answering Party

- (a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.
- (b) Within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action that have appeared. See Code of Civil Procedure sections 2030.260–2030.270 for details.
- (c) Each answer must be as complete and straightforward as the information reasonably available to you permits, including the information possessed by your attorneys or agents. If an interrogatory cannot be answered completely, answer it to the extent possible.
- (d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable

and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

- (e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer can be found.

If you have provided a document depository with documents from which answers to these interrogatories may be derived and to which the asking party has access, you may answer an interrogatory by identifying specific deposited documents (for example, by Bates stamp number) and the index associated with the specific produced documents.

- (f) When an address and telephone number for the same person are requested in more than one interrogatory, you need furnish that information only in your response to the first interrogatory that asks for it.
- (g) If you are asserting a privilege or making an objection to an interrogatory, you must specifically assert the privilege or state the objection in your written response.
- (h) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of California that the foregoing answers are true and correct.

(DATE)

(SIGNATURE)

Section 4. Definitions

Words in **boldface** in these interrogatories are defined as follows:

- (a) **Address** means a full street address, including any unit number, and the city, state, and zip code.
- (b) **Association** means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development, as more fully set forth in Civil Code section 1350 and following.
- (c) **Builder** means any **person**—including without limitation an **owner**, developer, or subdivider—who is or was involved in the construction, development, design, marketing, or sale of the **subject property**.
- (d) **Construction claim** means any allegation (other than a **construction defect claim**) relating to residential, industrial, or commercial construction, including without limitation any allegations of fraud or deceit, that all or a part of the construction has been delayed, that more or less money is due, or that some legal or contractual obligation has been breached relating to the construction or sale of the **subject property**.

Construction claim means (*asking party may insert a definition in the space below or on an attached sheet labeled "Sec. 4(d)—Definition of Construction Claim"*):

- (e) **Construction defect claim** means an allegation that all or a part of some construction or design, including without limitation residential, industrial, or commercial construction, does not comply with the requirements of an applicable contract, design, plan, installation instruction, specification, statute, code, or standard or is otherwise defective or deficient, including any allegations of related property damage.

Construction defect claim means (*asking party may insert a definition here or on an attached sheet labeled "Sec. 4(e)—Definition of Construction Defect Claim"*):

- (f) **Construction manager** means a licensed or unlicensed **person** who manages the construction as to the **subject property** on behalf of the **builder** or **owner** and who did not enter into a contract with a general **contractor**, **subcontractor**, or **design professional**.
- (g) **Contract** means an oral, written, or implied agreement to provide equipment, supplies, materials, work, or services for construction as to the **subject property**, including without limitation change orders, work orders and purchase orders.
- (h) **Contractor** as used herein means any licensed or unlicensed **person** who contracts with a **builder** or **owner** to perform construction as to the **subject property** or to enter into a **contract** with a **subcontractor** or **design professional** as to such construction.
- (i) **Design professional** means any licensed or unlicensed **person**, including without limitation any soils engineers, geotechnical engineers, civil engineers, structural engineers, landscape or environmental engineers, HVAC engineers, and architects and landscape architects who has provided any design or design services, including plans, specifications, or calculations for construction, to the **subject property**.
- (j) **Document** means a writing as defined in Evidence Code section 250 and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, magnetically and electronically stored information, and every other means of recording on any tangible medium and in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.
- (m) **Insurance policy** means any contract of insurance, whether primary, pro rata, fronting, umbrella, excess, or otherwise, issued by any admitted or nonadmitted insurer, including without limitation any policy or covering agreement issued by any insurance company, risk retention group, captive group, or joint powers authority.
- (n) **Owner** means any **person** who owns or owned legal or equitable title to the **subject property**.
- (o) **Person** includes a natural person, firm, association, organization, general or limited or professional joint venture, partnership, business, trust, limited **liability** company, corporation, or public entity.

- (p) **Pleading** mean the original or most recent amended version of any complaint, cross-complaint, or complaint in intervention, and answer to same.
- (q) **Product** means any goods produced or manufactured by natural means or by hand or with tools, machinery, chemicals, or the like, and which is the subject of a **construction defect claim** in this action.
- (r) **Subcontractor** means any licensed or unlicensed **person** who entered into a **contract** with a **contractor** for any of the construction on the **subject property**.
- (s) **Subject property** means any real property that is the subject of the **construction claim** or **construction defect claim** made in this action.
- (t) **Supervising employee** is an employee responsible for the supervision and direction of one or more employees involved in construction on the **subject property**. **Supervising employee** also includes the Responsible Managing Officer and Responsible Managing Employee (as those terms are used in Business and Professions Code sections 7065, 7068, and 7068.1) for each **builder**, general **contractor**, and **subcontractor** involved in the **subject property**.
- (u) **Supplier** means any **person** who enters into a **contract** to provide equipment, supplies, or materials for the construction as to the **subject property**.
- (v) **You** (including the possessive **your**) and **anyone acting on your behalf** refers to you, your agents, your employees, your insurance carriers, your attorneys, your accountants, your investigators and their agents and employees, and anyone else acting on your behalf other than your nondisclosed expert consultants.

Section 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.710:

CONTENTS

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326.0	Responses to Requests for Admissions

301.0 Identity of Persons Answering These Interrogatories

- 301.1 State the name, **address**, telephone number and relationship to **you** of each **person** who prepared, or assisted in the preparation of, the responses to these interrogatories. (*Do not identify anyone who simply typed or reproduced the responses.*)

302.0 General Background Information—Individual

- 302.1 State:
- your** name;
 - every name **you** have used in the past; and
 - the dates **you** used each name.
- 302.2 State the date and place of **your** birth:
- 302.3 State:
- your** present residence **address**
 - your** residence **addresses** for the past 15 years;
 - the dates you lived at each **address**; and
 - your** telephone number at **your** present **address**.
- 302.4 State:
- the name, **address**, and telephone number of **your** present employer or place of self-employment, and **your** current job title; and
 - the name, **address**, dates of employment or self-employment, and job title, for any employment or self-employment **you** have had from five years before the material facts on which the **construction claim** or the **construction defect claim** is based until today.
- 302.5 State:
- the name and **address** of each school or other academic or vocational institution **you** have attended, beginning with high school;
 - the dates **you** attended;
 - the highest grade level **you** completed; and
 - the degrees received.
- 302.6 Have **you** ever been convicted of a felony? If so, for each conviction, state:
- the city and state where **you** were convicted;
 - the date of conviction;
 - the offense; and
 - the court and case number.
- 302.7 Can **you** speak English with ease? If not, what language and dialect do **you** normally use?
- 302.8 Can **you** read and write English with ease? If not, what language and dialect do **you** normally use?

303.0 General Background Information—Business Entity

- 303.1 Are **you** a corporation? If so, state:
- the name in **your** current articles of incorporation;

- (b) all other names used by the corporation during the past 15 years and the dates each name was used;
- (c) the date and place of incorporation;
- (d) the **address** of the principal place of incorporation;
- (e) whether **you** are qualified to do business in California; and
- (f) any other state in which **you** are qualified to do business.
- 303.2 Are **you** a partnership? If so, state:
- (a) the current name of **the** partnership;
- (b) all other names used by the partnership during the past 15 years and the dates each name was used;
- (c) whether **you** are a limited partnership and, if so, under the laws of what jurisdiction;
- (d) the name and **address** of each general partner; and
- (e) the **address** of the principal place of business
- 303.3 Are **you** a limited liability company? If so, state:
- (a) the company name stated in **your** current articles of organization;
- (b) all other names used by the company during the past 15 years and the date each was used;
- (c) the date and place of filing of the articles of organization;
- (d) the **address** of the principal place of business;
- (e) whether **you** are qualified to do business in California; and
- (f) any other state in which **you** are qualified to do business.
- 303.4 Are **you** a joint venture? If so, state:
- (a) the current name of **your** joint venture;
- (b) all other names used by the joint venture during the past 15 years and the dates each name was used;
- (c) the name and **address** of each joint venture; and
- (d) the **address** of the principal place of business
- 303.5 Are **you** an unincorporated association? If so, state:
- (a) the current name of **your** unincorporated association;
- (b) all other names used by the unincorporated association during the past 15 years and the dates each name was used;
- (c) the **address** of the principal place of business; and
- (d) list the names, **addresses**, and phone numbers of all **your** board members for the past 10 years, in order of the date each took office.
- 303.6 Have **you** done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
- (a) the fictitious business name;
- (b) the dates each name was used;
- (c) the state and county of each fictitious name filing; and
- (d) the **address** of the principal place of business.
- 303.7 During the time that **you** performed any work at or relating to the **subject property**, did **you** possess a valid California contractor's license or other professional license for the work being performed? If so, state
- (a) the type of license;
- (b) the name, **address**, and telephone number of the holder of the license;
- (c) the class or type of license;
- (d) the license number;
- (e) any lapse of the license while **you** performed any work at or relating to the **subject property** and the dates of those lapses;
- (f) any suspension of the license while **you** performed any work at or relating to the **subject property** and the dates of those suspensions; and
- (g) any inactive status of the license while **you** performed any work at or relating to the **subject property** and the dates of the inactivity.

304.0 Insurance

- 304.1 At or since the time of the material facts on which the **construction claim** or the **construction defect claim** is based, was there in effect any **insurance policy** through which **you** are or may be entitled to coverage for losses or expenses that have been or may be incurred related to the **construction claims** or **construction defect claims** asserted against **you**, including but not limited to defense costs, indemnity for settlements or damages awarded against **you**, or loss and adjustment expenses? If so, for each policy state:
- (a) the policy number or other unique number used by the issuer to identify the **insurance policy**, and the effective dates of coverage;
- (b) the kind of insurance or coverage (including without limitation commercial general liability, professional liability, directors and officers, homeowners, property, course of construction, builder's risk, automobile, or public entity liability protection);
- (c) the policy level and description of any underlying insurance or self insurance that must be exhausted prior to its application (for example, for umbrella or excess insurance, please state the amount of underlying insurance or self-insurance that must be exceeded before the policy applies);
- (d) the name of any **person** who is or may become a party to this action who may qualify as an insured, an additional insured, or a protected or covered **person**;
- (e) whether the **insurance policy** contains a blanket additional insured provision or other provision whereby the **person** insured (or **person** protected by the **insurance policy**) includes any **person** or entity for whom one Insured or protected **person** is obligated to provide additional insured coverage in some kind of **contract** or agreement;
- (f) the aggregate and per-occurrence or per-claim limit of liability for each potentially applicable coverage contained in the **insurance policy**, including the limit the insurer claims is potentially applicable (if less than the limit stated in the policy declarations);
- (g) the limit of any retained amount payable by any insured relative to a claim otherwise covered by the policy, whether by means of a deductible, self-insured retention, deductible indemnity agreement, or retrospective premium provision, and whether the payment of loss and adjustment or defense expense reduces such retention obligation;
- (h) whether the **insurance policy** contains an exclusion

barring coverage for damage known to any insured prior to the policy period or barring coverage for damage that first occurred prior to the coverage period;

- (i) whether the indemnity limit of the **insurance policy** is diminished by the cost of defense;
- (j) whether any controversy or coverage dispute exists between **you** and the insurer;
- (k) whether the insurer issuing the **insurance policy** has issued a written reservation of rights; and
- (l) the name, **address**, and telephone number of the custodian of the policy.

*(Instead of responding to items (a)–(i) above, you may attach a complete and accurate copy of each **insurance policy** responsive to this interrogatory. Even if you attach such copies, you must still give written answers to items (j)–(l) for each policy.)*

- 304.2 Are **you** self-insured under any statute for the damages, claims, or actions that have arisen out of the **construction claim** or the **construction defect claim**? If so, specify the statute.
- 304.3 Has any **subcontractor** who is or might be a party to this action named **you** as an additional insured on an insurance certificate or endorsement? If so, for each such **subcontractor**, state:
 - (a) its name, **address**, and telephone number;
 - (b) whether **you** or the insured have made any tender under that **subcontractor's insurance policy**;
 - (c) the response to **your** tender; and
 - (d) whether the **contract** between the **subcontractor** and **you** required the **subcontractor** to carry an **insurance policy** naming **you** as an additional insured.

305.0 Subject Property Damages

- 305.1 Do **you** attribute any loss of or damage to **subject property** to the facts on which the **construction claim** or the **construction defect claim** is based? If so, for each **subject property**,
 - (a) identify the **subject property**;
 - (b) describe the nature and location of the loss or damage to the **subject property**;
 - (c) state when **you** became aware of the loss or damage;
 - (d) state the amount of damage **you** are claiming for each piece of **subject property** and how the amount was calculated.
- 305.2 Has the **subject property** been sold during the past 10 years? If so, state:
 - (a) the name, **address**, and telephone number of seller;
 - (b) the date of sale; and
 - (c) the sale price.

*(This interrogatory does not apply to sales of individual units when the answering party is an **association**.)*
- 305.3 Has a written estimate or evaluation been made for any item of loss or damage identified in **your** answer to 305.1? If so, for each estimate or evaluation state:
 - (a) the name, **address**, and telephone number of the **person** who prepared it and the date prepared;
 - (b) the name, **address**, and telephone number of each **person** who has a copy of it;
- (c) the amount of damage stated; and
- (d) the basis of the estimate or evaluation.
- 305.4 State the exact manner in which title is held to each piece of **subject property** for which **you** are claiming damages in this litigation.
- 305.5 For each piece of **subject property**, or improvements on **subject property**, in which **you** have an ownership interest, state:
 - (a) the date **you** received an ownership interest in the **subject property** or improvements;
 - (b) whether **you** are the original purchaser;
 - (c) the name of the **person** who transferred title in the **subject property** or improvements to **you**;
 - (d) the purchase price.
- 305.6 Did **you** receive any written or oral disclosures, homeowner's manuals, written or oral warranties, or other representations at or about the time **you** purchased any **subject property** or improvements on the **subject property**? If so,
 - (a) identify all written disclosures, homeowner's manuals, or written warranties **you** received.
 - (b) state the name, **address**, and telephone number of the **person** who has each **document** containing such materials;
 - (c) describe any oral warranties or representations **you** were given;
 - (d) identify any **person** who made those oral warranties and when and where they were made.
- 305.7 Did **you** prepare or provide any written or oral disclosures, homeowner manuals, written or oral warranties, or other representations at or about the time **you** sold or transferred any **subject property** or improvements on **subject property**? If so,
 - (a) identify any written disclosures, homeowner manuals, or written warranties;
 - (b) state the name, **address**, and telephone number of the **person** who has each version of each **document** containing such materials;
 - (c) describe any oral warranties or representations **you** provided;
 - (d) identify any **person** to whom **you** made those oral warranties and when and where the oral warranties were made.
- 305.8 Have **you** made any improvements to any **subject property** in which **you** have any ownership interest? If so, state:
 - (a) each improvement you made, including without limitation painting, landscaping, pool or spa installation, light fixture changes, cabinet changes, floor covering replacement, or room additions;
 - (b) the date each such improvement was made; and
 - (c) the name, **address**, and telephone number of the **person** who performed the improvement.
- 305.9 Have **you** performed maintenance—including without limitation roof repair, painting, and caulking—to any **subject property** in which **you** have an ownership interest? If so, state:

- (a) the nature of each act of maintenance;
- (b) the date each act of maintenance was performed; and
- (c) the name, **address**, and telephone number of the **person** who performed each act of **maintenance**.
- 305.10 During the past two years, has the **subject property** been appraised? If so, for each appraisal state:
- (a) the date of the appraisal;
- (b) the name, **address**, and telephone number of the **person** who performed the appraisal; and
- (c) the appraised value given for the **subject property**.
- 305.11 For each problem or defect **you** contend exists in any **subject property** owned by **you**, describe in detail:
- (a) the nature of any problem or defect;
- (b) the date **you** first became aware of such problem or defect;
- (c) the actions taken by **you**, if any, in response to the problem or defect, including reporting it to any party in this litigation; and
- (d) the response, if any, by any party in this litigation to **your** report of the problem or defect.
- 305.12 If **you** have repaired or attempted to repair any **construction claim** or **construction defect claim** you allege exists in any **subject property** owned by **you**, state:
- (a) a description of the problem or defect repaired or attempted to be repaired;
- (b) a description of the repair or attempted repair;
- (c) the date of the repair or attempted repair;
- (d) the cost of the repair or attempted repair; and
- (e) the name, **address**, and telephone number of the **person** who performed the repair or attempted repair.
- 305.13 Have **you** ever hired any **person**, including but not limited to a **contractor**, **design professional**, or engineer (but excluding those hired by **your** attorney), to inspect, prepare a bid regarding, or repair a condition that **you** contend in this litigation is a **construction claim** or **construction defect claim**? If so, for each, state
- (a) the date of the inspection;
- (b) the name, **address**, and telephone number of the **person** performing the inspection;
- (c) the general nature of the problem or defect inspected; and
- (d) the cost of the inspection.
- 305.14 Have **you** ever made any insurance or warranty claims or claims to any **person** for the **construction claim** or **construction defect claim** alleged in this action? If so, state:
- (a) the name, **address**, and phone number of the individual or entity to whom **you** made the claim;
- (b) the approximate date of the claim; and
- (c) the resolution of that claim.
- 306.0** [Reserved]
- 307.0** [Reserved]
- 308.0** [Reserved]
- 309.0 Other Damages**
- 309.1 Are there any other damages that **you** attribute to the **construction claim** or **construction defect claim** alleged in this action? If so, for each item of damage state:
- (a) the nature;
- (b) the date it occurred;
- (c) the amount; and
- (d) the name, **address**, and telephone number of each **person** whom you assert suffered damages.
- 309.2 Do any **documents** support the existence or amount of any item of damages claimed in interrogatory 309.1? If so, describe each **document** and state the name, **address**, and telephone number of the **person** who has each **document**.
- 310.0 Other Claims and Previous Claims**
- 310.1 In the past 10 years, have **you** filed any action (not counting this one) or made a written claim or demand for compensation for damages to the **subject property**? If so, for each action, claim, or demand state:
- (a) the name, **address**, and telephone number of each **person** against whom the claim or demand was made or the action filed;
- (b) the court, names of parties, and case number of each action filed;
- (c) the name, **address**, and telephone number of any attorney representing **you**;
- (d) a general description of the action, claim, or demand;
- (e) whether the claim or action has been resolved or is still pending; and
- (f) if applicable, how it was resolved, including the amount of any judgment or settlement, description of repairs made or ordered, or any other resolution.
- 311.0 Investigations—General**
- 311.1 Do **you** or **anyone acting on your behalf** know of any photographs, films, videotapes, recordings, or electronically stored information depicting any place, object, event, or individual concerned in the **construction claim** or the **construction defect claim**? If so, for each type of media, state:
- (a) the number of photographs, length of film or videotape, or megabytes of an electronic recording;
- (b) the places, objects, or **persons** photographed, filmed, videotaped, or otherwise recorded;
- (c) the date each photograph, film, videotape, or electronic recordings was taken or recorded;
- (d) the name, **address**, and telephone number of each individual who took these photographs or recorded these films, videotapes, or electronic recordings; and
- (e) the name, **address**, and telephone number of each **person** who has the original media or copies of these photographs, films, videotapes, or electronic recordings.

311.2 Do **you** or **anyone acting on your behalf** know of any diagram, reproduction, or model of any place or thing concerning the **construction claim** or the **construction defect claim**? If so, for each item state:

- (a) the type of item (such as blueprint, diagram, reproduction, model, etc.);
- (b) its subject matter; and
- (c) the name, **address**, and telephone number of each **person** who has the item.

311.3 Has any report been made by any **person** concerning the **construction claim** or the **construction defect claim**? If so, state:

- (a) the name, title, and employer of the **person** who made the report;
- (b) the date and type of report made;
- (c) the name, **address**, and telephone number of the **person** for whom the report was made; and
- (d) the name, **address**, and telephone number of each **person** who has an original or copy of the report.

311.4 Have **you** or **anyone acting on your behalf** (except for consultants retained by counsel or expert trial witnesses) inspected the **subject property** on which the **construction claim** or the **construction defect claim** is based? If so, for each inspection state:

- (a) the name, **address**, and telephone number of the individual making the inspection; and
- (b) the date of the inspection.

312.0 Statutory or Regulatory Violations

312.1 Do **you** or **anyone acting on your behalf** contend that any **person** involved in the occurrence of the material facts on which the **construction claim** or **construction defect claim** is based violated any statute, ordinance, or regulation, and that such violation was a legal (proximate) cause of the **construction claim** or **construction defect claim**? If so, for each contention, identify the name, **address**, and telephone number of each **person** involved, and the statute, ordinance, or regulation violated.

313.0 Fraud, Misrepresentation, or Breach of Fiduciary Duty

313.1 Describe each **construction claim** or **construction defect claim** at the **subject property** that **you** contend someone else knew about but did not disclose to **you** at the time of the purchase, development, design, construction, or provision of service or supplies to the **subject property**. For each claim:

- (a) state all facts on which **you** base **your** response;
- (b) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of those facts; and
- (c) identify all **documents** and other tangible things that support **your** response and state the name, **address**, and telephone number of the **person** who has each **document** or thing.

313.2 Describe each specific concealment and

misrepresentation that **you** claim was concealed from or made to **you** in connection with the purchase, development, design, construction, or provision of services or supplies to the **subject property**. For each one:

- (a) state all facts on which **you** base **your** response, including when, how, and by whom any concealment occurred and any misrepresentation was communicated to **you** ;
- (b) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of these facts; and
- (c) identify all **documents** and other tangible things that support **your** response and state the name, **address**, and telephone number of any **person** who has each **document** or thing.

314.0 Contracts

314.1 For each agreement alleged in the **pleadings**:

- (a) identify each **document** that is part of the agreement and state the name, **address**, and telephone number of the **person** who has each **document**;
- (b) describe each part of the agreement not in writing, along with the name, **address**, and telephone number of each **person** agreeing to that provision, and the date that part of the agreement was made;
- (c) identify all **documents** that evidence any part of the agreement not in writing, and for each, state the name, **address**, and telephone number of each **person** who has the **document**;
- (d) identify all **documents** that are part of any modification to the agreement and for each, state the name, **address**, and telephone number of each **person** who has the **document**;
- (e) describe each modification to the agreement not in writing, along with the date the modification was made and the name, **address**, and telephone number of each **person** agreeing to the modification;
- (f) identify all **documents** that evidence any modification of the agreement not in writing and for each state the name, **address**, and telephone number of the **person** who has each **document**; and
- (g) state the name, **address**, and telephone number of the **person** most knowledgeable regarding the negotiations and **contracting** for any services **you** performed at any **subject property**.

314.2 Was there a breach of any agreement alleged in the **pleadings**? If so, describe every act or omission that **you** allege to be a breach of the agreement and give the date of each.

314.3 Was performance excused for any agreement alleged in the **pleadings**? If so, identify each agreement and state why performance was excused.

314.4 Was any agreement alleged in the **pleadings** terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated, the date of the termination, and the basis of the termination.

314.5 Is any agreement alleged in the **pleadings** unenforceable? If so, identify each unenforceable

agreement and state why it is unenforceable.

- 314.6 Is any agreement alleged in the **pleadings** ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.
- 314.7 Did **you** contract out any of the work **you** were to perform on the **subject property** to another **person** or entity? If so,
- state the name, **address**, and phone number of the **person** with whom **you** entered the **contract**;
 - state if the **contract** was oral or in writing; and
 - describe the terms of the **contract**.

315.0 [Reserved]

316.0 [Reserved]

317.0 [Reserved]

318.0 [Reserved]

319.0 [Reserved]

320.0 Individual Homeowner Claims

(A Homeowners Association or Common Interest Development need not respond to this section.)

- 320.2 Is the **subject property** your primary residence? If not, describe how often **you** reside and when you last resided at the **subject property**.
- 320.3 Have **you** ever rented or leased the **subject property** to another **person**? If so, state:
- the names, **addresses**, and last known telephone number of all **persons** who rented or leased the **subject property**;
 - the names, **addresses**, and last known telephone number of all **persons** who occupied the property under each rental or lease agreement; and
 - the beginning and ending dates of each rental or lease agreement.

321.0 Scope of Work (Contractors and Subcontractors)

- 321.1 State the name, **address**, telephone number, job title, and job duties of each of **your** current or former **supervising employees** who were involved in the construction or supervision of construction of any improvements to the **subject property**.
- 321.2 Describe the scope of work that **you** performed and any materials that **you** supplied at the **subject property**.
- 321.3 Describe all locations on the **subject property** where **you** performed work or services (by phase number, unit number, building number or **address**, or common area description).
- 321.4 State all dates, including first and last, that **you**:
- performed work or supervision for or at the **subject property**; or
 - supplied materials for the **subject property**.

- 321.5 For all **contracts** identified in **your** response to Interrogatory 314.1, including all agreements, change orders, or additional work orders related to such **contracts**, do **you** contend that any **contractor or subcontractor** other than **you** performed any portion of work or supplied any portion of materials that **you** contracted to deliver? If so,
- identify the terms of the **contract** under which work was performed; and
 - identify the terms of the **contract** under which materials were supplied.
- 321.6 For all **contracts** identified in **your** response to Interrogatory 314.1, including all agreements, change orders, or additional work orders related to such **contracts**, do **you** contend that **you** performed any work or provided any material on the **subject property** that is not listed in the written **contract**? If so:
- identify the work performed; and
 - identify the materials provided.
- 321.7 Did **you** issue any warranty for work performed or materials supplied on the **subject property**? If so, state:
- what the warranty covered; and
 - the dates it was in effect.
- 321.8 Did **you** perform any work or supply any materials—under warranty or otherwise—at the **subject property** after the certificate of completion on that **subject property** was issued? If so, state:
- what work was performed, the dates the work was performed, and the **address**; and
 - what materials were supplied, the dates they were supplied, and the delivery **address**.
- 321.9 Were **you** provided with a copy of any plans, reports, or specifications for the project before performing the work? If so,
- identify all plans, reports, or specifications;
 - state the date when each plan, report, or specification was provided to **you**; and
 - state the names, **addresses**, and telephone numbers of all **persons** who provided **you** with each plan, report or specification.
- 321.10 Before performing **your** work at the project, did **you** communicate any objections to or requests for changes or modifications to any portion of those plans, reports, or specifications you listed above in 321.9? If so,
- identify each plan, report, or specification that was the subject of the objection or request for change or modification;
 - state the names, **addresses**, and telephone numbers of all **persons** to whom **you** communicated **your** objections or requests for changes or modifications; and
 - describe the result, if any, of each of **your** objections or requests for changes or modifications.

- 321.11 Did **you** rely on any **documents** or oral instructions other than those listed in **your** responses to interrogatories 321.5 or 321.9 to complete **your** work at the project? If so,
- identify all **documents** and other tangible things that **you** relied on, and state the name, **address**, and telephone number of the **person** who has each **document** or thing; and
 - state each oral instruction **you** were given and the name, **address**, and telephone number of the **person** who gave **you** the oral instruction; and
 - state the date when **you** were provided the **documents** or instruction.
- 321.12 Did **you** communicate any criticisms (including but not limited to sequencing problems) to any **developer**, **design professional**, **contractor**, **subcontractor**, or **supplier** on the project during construction? If so,
- state all criticisms and the dates they arose;
 - state the name, **address**, telephone number, and job title of every **person** to whom **you** communicated **your** criticism; and
 - describe any resolutions of issues **you** raised.
- 321.13 During the time that **you** performed any work at the **subject property**, did **you** contract to have any unlicensed **subcontractor** or **design professional** perform work at the **subject property**? If so,
- identify each such **person** or entity by name, **address**, and telephone number; and
 - describe the type of work you had each such **person** perform.

322.0 Design Professionals (Architects/Engineers)

- 322.1 Did **you** or any of **your** employees design any portion of the **subject property** or project in this litigation? If so, state:
- who retained **you** to perform the design work;
 - the dates of **your** retention or **contract**;
 - the portion of the **subject property** or project **you** designed;
 - which Building Code provisions applied to **your** design for the **subject property** or project;
 - the design parameters **you** relied on in **your** design work for the **subject property** or project;
 - who approved **your** design for the **subject property** or project;
 - the date of each approval of **your** design work for the **subject property** or project; and
 - the names of all **supervising employees**, past or present, who participated in the design of the **subject property** or project.
- 322.2 Did **you** revise or amend **your** design for the **subject property** after the earliest date of approval identified above in 322.1(g)? If so, state:
- the dates of all revisions or amendments to **your** original design;
 - the substance or description of all revisions or amendments to **your** original design;
 - the reason **you** revised or amended **your** original design;
- 322.3 Did **you** perform any on-site services at the **subject property**? If so, state:
- the dates on which **you** visited the **subject property** to perform services;
 - the services **you** performed on each date; and
 - the portions of construction **you** observed while on site.
- 322.4 Did **you** observe any deviation from the intended design at the **subject property**? If so, state:
- the nature of the deviation and date **you** observed it;
 - whether **you** reported any deviation from the intended design;
 - when and to whom **you** reported such deviation ; and
 - whether any corrective actions were taken with respect to any observed deviation.

323.0 Manufacturers

- 323.1 For each **product** that **you** supplied or manufactured, name the product or series, prior or later versions of it, and describe what changes (design or otherwise) have been made to it over its lifespan.
- 323.2 For each **product** identified in response to the preceding interrogatory, state:
- who designed the **product**;
 - how it was tested or certified;
 - what standards applied to its manufacture;
 - any test reports or certifications of the **product**, by date; and
 - the name, **address**, and telephone number of the facility where the **product** was manufactured.
- 323.3 For each **product** identified above, state:
- the quality control systems in place at each manufacturing site listed in **your** response to 323.2(e);
 - the date when the quality control system was established;
 - the criteria used for the quality control system; and
 - the names, **addresses**, and job titles of all **persons** who have been in charge of the quality control system over the last 10 years.
- 323.4 How and where was each **product** identified above stored until shipped?
- 323.5 How was each **product** identified above shipped? For each, state:
- the method of shipment;
 - where it was shipped; and
 - who accepted delivery of it and when.

- 323.6 Do **you** have a customer service department? If so:
 - (a) state the name, **address**, telephone number, and job title of the **person** in charge; and
 - (b) describe any complaints received concerning any **product** identified above and how they were handled.
- 323.7 Is there or has there ever been a warranty for any **product** identified above? If so, what are the terms of the warranty?
- 323.8 Who was in charge of the sales of the **product** for this project? State the person's name, address, telephone number and job title.
- 323.9 Are there any brochures, advertisements, or sales materials for any **product** identified above?
- 323.10 Are there any installation instructions or manufacturer recommendations for any **product** identified above? If so, state:
 - (a) the name, **address**, telephone number, and job title of the **person** who wrote them;
 - (b) all changes or modifications to them, and the dates the changes or modifications were made; and
 - (c) the name, **address**, telephone number, and job title of the **person** to whom the changes or modifications were provided.

324.0 Denials and Special or Affirmative Defenses

- 324.1 Identify each denial of a material allegation and each special or affirmative defense in **your pleadings**, and for each:
 - (a) state all facts on which **you** base the denial or special or affirmative defense;
 - (b) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of those facts; and
 - (c) identify all **documents** and other tangible things that support **your** denial or special or affirmative defense, and state the name, **address**, and telephone number of the **person** who has each **document**.

325.0 Defendant's Contentions

- 325.1 Do **you** contend that any **person**, other than **you** or the plaintiff, contributed to the existence of the **construction claim** or **construction defect claim** or the damages claimed by the plaintiff? If so:
 - (a) state the name, **address**, and telephone number of each **person** who contributed to
 - (b) state all facts on which you base **your** contention;
 - (c) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of the facts; and
 - (d) identify all **documents** and other tangible things that

support **your** contention and state the name, **address**, and telephone number of the **person** who has each **document** or thing.

- 325.2 Do **you** contend that plaintiff did not incur damages arising from the facts on which the **construction claim** or the **construction defect claim** is based? If so:
 - (a) state all facts on which you base your contention;
 - (b) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of the facts; and
 - (c) identify all **documents** and other tangible things that support **your** contention and state the name, **address**, and telephone number of the **person** who has each **document** or thing.
- 325.3 Do **you** contend that any of the property damage claimed by plaintiff thus far in this case was not caused by the **construction claim** or **construction defect claim**? If so:
 - (a) identify each item of property damage;
 - (b) state all facts on which you base **your** contention;
 - (c) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of the facts; and
 - (d) identify all **documents** and other tangible things that support **your** contention and state the name, **address**, and telephone number of the **person** who has each **document** or thing.
- 325.4 Do **you** contend that any of the costs claimed by plaintiff thus far in this case for repairing the property damage are unreasonable? If so:
 - (a) identify each cost item;
 - (b) state all facts on which **you** base **your** contention;
 - (c) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of the facts; and
 - (d) identify all **documents** and other tangible things that support **your** contention and state the name, **address**, and telephone number of the **person** who has each **document** or thing.

326.0 Responses to Request for Admissions

- 326.1 Is **your** response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
 - (a) state the number of the request;
 - (b) state all facts on which **you** base **your** response;
 - (c) state the names, **addresses**, and telephone numbers of all **persons** who have knowledge of those facts; and
 - (d) identify all **documents** and other tangible things that support **your** response, and state the name, **address**, and telephone number of the **person** who has each **document** or thing.

Date:

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

(SIGNATURE)

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	Commentator	Position	Comment	Committee Response
1.	Aboiralor, Johnbull Torrance	A	No specific comment.	The committee appreciates the input.
2.	Advanced Automatic Sprinkler By: Fred Benn, President San Ramon	A	No specific comment.	The committee appreciates the input.
3.	Allied Framers, Inc. By: Jakki Kutz, President Vacaville	A	No specific comment.	The committee appreciates the input.
4.	Amini, Roxana Attorney Wesierski & Zurek LLP Irvine	A	No specific comment.	The committee appreciates the input.
5.	Angaran, Jack Reno, NV	A	No specific comment.	The committee appreciates the input.
6.	Arabian-Lee, Ellen Attorney Gurnee & Daniels LLP Roseville	A	No specific comment.	The committee appreciates the input.
7.	Armstrong & Associates Insurance Services By: Daniel Bertrand, Senior Vice President Woodland	A	We support this proposed bill. As an insurance broker for small to medium sized artisan contractors, our clients have been severely and unfairly affected by the legal environment placed upon their insurance policies.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
8.	Association of Defense Counsel of Northern California and Nevada By: John M. Vrieze, President	A	The Association of Defense Counsel of Northern California & Nevada (ADC) has reviewed the proposed Form Interrogatories – Construction Litigation (Form DISC-005). These interrogatories have been needed for a long time, since the standard Form Interrogatories currently in effect	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
			<p>are simply not effective for use in Construction Litigation, a specialized area of litigation that generally involves complex issues and multiple parties.</p> <p>Please accept this letter as a strong recommendation for their adoption. We believe these interrogatories will be a useful new discovery tool for ADC members and will help ADC members to more efficiently handle litigation on behalf of their clients.</p>	
9.	Association of Southern California Defense Counsel By: Diane Mar Wiesmann, President Riverside	A	<p>The Association of Southern California Defense Counsel (ASCDC) has reviewed the proposed Form Interrogatories – Construction Litigation (Form DISC-005).</p> <p>These interrogatories have been needed for a long time, since the standard Form Interrogatories currently in effect are simply not effective for use in Construction Litigation, a specialized area of litigation that generally involves complex issues and multiple parties.</p> <p>Please accept this letter as a strong recommendation for their adoption. We believe these interrogatories will be a useful new discovery tool for ASCDC members and will help ASCDC members to more efficiently handle litigation on behalf of their clients.</p>	The committee appreciates the input.
10.	Baker Keener & Nahra By: Robert C. Baker, Senior Partner Los Angeles	A	These are far better than what is used now.	The committee agrees that the proposed forms should work better in construction litigation cases than the general civil discovery form interrogatories.
11.	Baldino, Ryan W. Attorney Hammons & Baldino LLP	A	My firm represents subcontractors in construction defect matters throughout California. The need for construction defect form interrogatories is great. In most cases, small	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a

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	Commentator	Position	Comment	Committee Response
	Torrance		<p>subcontractors are sued by Developers and General Contractors based upon broadly worded form pleadings filed by Plaintiff CD attorneys.</p> <p>As all subcontracts require indemnity and defense of Developers and General Contractors from allegations there is a great need to obtain verified discovery from homeowners document what the actual defects are in a case. Too often in CD cases, smaller subcontractors are forced into paying settlements even when there is no evidence of defects arising from that subcontractors scope of work.</p> <p>Verified discovery from homeowner Plaintiffs are required in all construction defect actions.</p>	standardized set of form interrogatories to help with discovery in this area.
12.	Barger, Glenn Chapman Glucksman Dean Roeb & Barger Los Angeles	A	No specific comment.	The committee appreciates the input.
13.	Bengtson, Eric Attorney San Jose	A	No specific comment.	The committee appreciates the input.
14.	BidMyCrib.com By: Morgan Jones, CEO Liberty Township, OH	A	Yes, I agree with the changes. Current legislation unfairly prejudices contractors.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
15.	Bledsoe Cathcart Diestel Pedersen & Treppa By: Steve E. McDonald, Attorney/Partner	A	We are experienced construction litigators and agree the proposed changes will help streamline written discovery in these cases!	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
	San Francisco			
16.	BMC West Corp. By: Ken Zanolini, Manager Modesto	A	No specific comment.	The committee appreciates the input.
17.	Bogdan, Bill Attorney Lynch Gilardi & Grummer San Francisco	AM	Specify that the interrogatories are not to be used in personal injury actions on the form itself.	The committee has concluded that this modification is not needed. The form interrogatories do not include any questions regarding personal injury, but may be used in a personal injury case based on a construction defect, should they be appropriate in such a case.
18.	Bonn, Elizabeth C. Partner Brown, Bonn & Friedman LLP Costa Mesa	A	No specific comment.	The committee appreciates the input.
19.	Bonne Bridges Mueller O'Keefe & Nichols By: David J. O'Keefe, President Los Angeles	A	No specific comment.	The committee appreciates the input.
20.	Braun, Nathaniel Attorney Easy Sullivan Wright Gizer & McRae LLP Los Angeles	A	No specific comment.	No response required
21.	Brooks, Alison A. Attorney – Senior Associate Strickroth & Parker LLP Santa Ana	A	No specific comment.	The committee appreciates the input.
22.	Brydon Hugo & Parker By: James C. Parker San Francisco	A	No specific comment.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
23.	Burke, Michael Attorney Vogl Meredith Burke LLP San Francisco	A	No specific comment.	The committee appreciates the input.
24.	Cal Coast Construction Spec Inc. By: Brian Christianson, President Camarillo	A	<p>Cal Coast Construction believes that the proposed form interrogatories appropriately address the stated purpose. These interrogatories contain a series of commonly asked questions in a standardized format. These questions are readily answerable by the appropriate parties early in the case. This will result in far less motions, costs, and time for the courts to administer a construction defect action.</p> <p>While the proposed form interrogatories would be helpful in the smaller (five or less housing units) cases, much greater benefit would be enjoyed by all parties if these were incorporated into cases involving 10 or even more housing units. The courts would see the benefits of the large number of parties in the larger cases knowing clearly what information is required. These numbers of parties would know early on if they are peripheral or substantive parties, and what their status is relative to the entire action. This would result in more cooperative efforts to resolve defense and indemnity issues much earlier, saving the courts and the involved parties significant time and resources. CALPASC [sic] would encourage the Judicial Council to consider these form interrogatories in most all construction defect cases. In fact, it would be advisable to require these interrogatories in all construction defect actions, unless the court would deem otherwise. A common complaint of all involved in construction defect actions is that it takes so long to get any credible information to evaluate each party's potential liabilities.</p>	<p>The committee notes the commentator's agreement with the proposed form.</p> <p>The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court finds good cause for the asking party to do so.</p>

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			<p>These interrogatories would help parties step into the action much earlier, reducing the cost of the action as well as resolving the case sooner, relieving the courts of a significant portion of the construction defect case load.</p> <p>For these reasons, Cal Coast Construction Spec. Inc enthusiastically supports the proposed New Form Interrogatories for Construction Litigation, while also strongly encouraging their use in larger cases.</p> <p>Thank You</p>	
25.	California Defense Counsel By: Jonathan C. Bacon Sacramento	A	California Defense Counsel (CDC) heartily supports the Civil and Small Claims Advisory Committee's recommendation of new form interrogatories for construction litigation. The CDC on behalf of its membership welcomes these revisions to the Judicial Council form interrogatories. The original form interrogatories, while an effective and efficient tool for use in other types of cases, were not well suited to most construction cases, were often cumbersome to respond to, and required objections where standardized questions proved poorly suited to the facts. The definitions provided in the new interrogatories are clear and the size and complexity of the cases to which the new interrogatories are to apply is well-reasoned. We believe these revisions are long overdue, will be well received by our many members who practice in the construction litigation arena, and will surely help simplify the discovery process.	The committee appreciates the input.
26.	California Professional Association of Specialty Contractors By: Bruce Wick, Director of Risk Management	A	CALPASC is a non-profit trade association of specialty contractors, suppliers, and affiliate members, operating in California. Our members are often involved Construction Defect Litigation cases. They or their	

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	<p>Sacramento</p> <p><i>(Seventy-one other comments were submitted expressly agreeing with and supporting this comment. Those comments are set forth in Comment Chart B.)</i></p>		<p>insurers are significant contributors to defense costs, settlements, and judgments, through indemnity agreements and additional insured endorsements. CALPASC members would greatly appreciate any substantive change that reduces litigation expenses; and helps identify much earlier, potential defects and the responsible parties.</p> <p>CALPASC strongly supports the proposed interrogatories, along with believing that increasing the size of cases where the interrogatories can be utilized will help both the courts and the participants minimize costs and time involved in construction defect cases. CALPASC believes that the proposed form interrogatories appropriately address the stated purpose. These interrogatories contain a series of commonly asked questions in a standardized format. These questions are readily answerable by the appropriate parties early in the case. This will result in far less motions, costs, and time for the courts to administer a construction defect action.</p> <p>While the proposed form interrogatories would be helpful in the smaller (five or less housing units) cases, much greater benefit would be enjoyed by all parties if these were incorporated into cases involving 10 or even more housing units. The courts would see the benefits of the large number of parties in the larger cases knowing clearly what information is required. These numbers of parties would know early on if they are peripheral or substantive parties, and what their status is relative to the entire action. This would result in more cooperative efforts to resolve defense and indemnity issues much earlier, saving the courts and the involved parties significant time and</p>	<p>The committee notes the commentator's agreement with the proposed form.</p> <p>The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court finds good cause for the asking party to do so.</p>

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	Commentator	Position	Comment	Committee Response
			<p>resources.</p> <p>CALPASC would encourage the Judicial Council to consider these form interrogatories in most all construction defect cases. In fact, it would be advisable to require these interrogatories in all construction defect actions, unless the court would deem otherwise. A common complaint of all involved in construction defect actions is that it takes so long to get any credible information to evaluate each party's potential liabilities. These interrogatories would help parties step into the action much earlier, reducing the cost of the action as well as resolving the case sooner, relieving the courts of a significant portion of the construction defect case load.</p> <p>For these reasons, CALPASC enthusiastically supports the proposed New Form Interrogatories for Construction Litigation, while also strongly encouraging their use in larger cases.</p>	
27.	Campbell, Randel J., Attorney Lynch, Gilardi & Grummer, PC San Francisco	A	No specific comment.	The committee appreciates the input.
28.	Capital City Drywall, Inc. By: Robert Truax, Safety Director/Quality Assurance North Highlands	A	These claims have been a complete waste of my time. I have spent several hours of my time inspecting houses to find nothing more than regular wear and tear on house after house. Besides the fact that the builder walks and signs off on a house to approve that the workmanship is up to industry standard. Let me reiterate several hours and have never been given the opportunity to repair any of our findings which have never been anything more than cosmetic (crack in angle / bullnose pop). I believe it is completely ridiculous for any company to be lumped into	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.

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	Commentator	Position	Comment	Committee Response
			a law suit for cosmetic not structural defects. So yes I'm in complete support of the proposed changes.	
29.	Carroll, Kelly, Trotter By: Jennifer Cooney, Attorney Long Beach	A	No specific comment.	The committee appreciates the input.
30.	Castillo, Monica Partner Sarrail, Castillo & Hall LLP Burlingame	A	No specific comment.	The committee appreciates the input.
31.	Christensen Ehret By: Edward E. Sipes, Managing Partner Torrance	A	No specific comment.	The committee appreciates the input.
32.	Citadel Tile and Flooring By: Cynthia Mithcell, President West Sacramento	A	No specific comment.	The committee appreciates the input.
33.	Coats, Ben Ventura	A	No specific comment.	The committee appreciates the input.
34.	Coe, Deborah Attorney/Shareholder Baker Manock & Jensen Fresno	AM	On 305.1 I believe a subpart should be added that inquires into the earliest date that "you" became aware of the property damage.	The committee has modified the form to include such a query.
35.	Committee on the Administration of Justice, State Bar of California, By: Saul Bercovitch, Legislative Counsel	A	The State Bar of California's Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council's Invitations to Comment, and appreciates the opportunity to submit these comments CAJ supports the adoption of the proposed form interrogatories specifically for construction litigation. CAJ commends all of the work that went into the creation of these interrogatories, and believes the existence of these	The committee notes the commentator's agreement with the proposed form.

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			<p>new interrogatories will be beneficial to all parties. CAJ fully endorses the content of the interrogatories. CAJ does, however, have some comments aimed at the potential use of these from interrogatories.</p> <p>Among other issues, the invitation to comment asks for specific comments on the following questions:</p> <p style="padding-left: 40px;">Would the proposed form interrogatories be appropriate and helpful in construction litigation as limited in the instructions? That is, in residential construction cases involving no more than five units, in commercial construction cases not deemed complex, and in complex construction cases only with permission of the court?</p> <p style="padding-left: 40px;">Should the instructions allow the form interrogatories for use in somewhat larger residential construction cases as well? Would they be appropriate and useful in actions involving up to 10 residential units? Would some other number—higher or lower—be more appropriate?</p> <p>CAJ recommends that these proposed form interrogatories be utilized without restriction on the size of the project or number of units. Presently the draft provides: “These interrogatories are not intended to be used in residential cases involving six or more single-family homes or housing units.” CAJ believes there is no compelling need to impose that limitation.</p> <p>The proposed instructions also provide: “In cases that</p>	<p>The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court</p>

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	Commentator	Position	Comment	Committee Response
			<p>have been deemed complex under rule 3.400 et seq. of the California Rules of Court, these interrogatories must not be used until the asking party has obtained judicial approval on a showing of good cause.” This instruction places the burden on the party seeking discovery in a complex action. CAJ recommends striking this provision. Designation of a case as complex should stand on its own, without being tied to use of the interrogatories. It is conceivable that precluding use of these form interrogatories in complex cases absent judicial approval could motivate a party to not designate a case complex (if they want to use the interrogatories) or to designate a case complex (if they want to avoid use of the interrogatories). CAJ suggests that the instructions be modified, so if a party believes that the form interrogatories are inappropriate for a particular construction matter, due to the case being deemed complex or the complexity of the construction project, the burden is placed on the responding party, either by asking the court to place this limitation on the parties at the case management conference or by making a responsive motion for a protective order, assuming the parties cannot work the issues out by meeting and conferring.</p> <p>CAJ also notes that proposed section 2, subdivision (a), allows for the additional use of other sets of form interrogatories where applicable in construction cases. CAJ believes this provision should be deleted. These proposed interrogatories are thorough, extensive and specifically designed for construction litigation. In many respects, the general form interrogatories either overlap with these proposed interrogatories or are inapplicable.</p>	<p>finds good cause for the asking party to do so. The committee declines to switch the burden in complex cases so as to require a responding party to show that the use of the form interrogatories is inappropriate, rather than to require a propounding party to show good cause for their use.</p> <p>The form has been modified in light of this comment. See section 2(a).</p>

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			<p>Inviting the use of multiple sets of form interrogatories could lead to unnecessary discovery disputes. CAJ recommends that a party be permitted to use either these form interrogatories or the general form interrogatories, but not both, absent stipulation or leave of court. To the extent a particular case involves issues not covered by these form interrogatories, parties would still be allowed to serve special interrogatories, in addition to these new form interrogatories.</p> <p>Finally, CAJ suggests modifying the definition of “subject property,” keeping the present definition, but also adding the option present under section 4, subdivisions (d) and (e), which allows the party to check off a box to separately define “construction defect” and “construction claim,” also allowing “subject property” to be separately defined by the party, in order to appropriately tailor the interrogatories.</p>	The committee disagrees with this suggestion, concluding that option to define “construction claim” or “construction defect claim” provides sufficient flexibility in the form.
36.	Cosgrove, Philip Brow Eassa & McLeod LLP Los Angeles	A	It just makes sense to standardize discovery requests in construction defect cases.	The committee appreciates the input.
37.	Costello, Lisa A. Cholakian & Associates San Francisco	A	No specific comment.	The committee appreciates the input.
38.	De Langis, Mark Lucas Valley Law San Rafael	A	No specific comment.	The committee appreciates the input.
39.	Desai Asim, Attorney Los Angeles	A	No specific comment.	The committee appreciates the input.
40.	Dollar, Steven Partner	A	I recommend that the Judicial Council adopt the proposed Form Construction Litigation Interrogatories. They are	The committee agrees.

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	Commentator	Position	Comment	Committee Response
	Ericksen Arbutnot San Jose		specifically designed for construction cases, as opposed to the standard Form Interrogatories currently used. The current form interrogatories apply best to personal injury cases and can be adopted for many other types of cases, but they are poorly suited to Construction Litigation.	
41.	Donald P. Dick Air Conditioning, Inc. By: David Dick, VP Fresno	A	Anything that helps put an end to the Construction Defect litigation/Insurance Fraud that is going on would be welcomed! The trend we are currently experiencing in the down economy is that if we continue at the current pace, it will bankrupt this company in 2-3 years. Pretty sad for a 42 year old business that has always maintained the highest level ratings with the CSLB and BBB.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
42.	Early Maslach & O'Shea By: John Tasker, Supervising Attorney Los Angeles	A	No specific comment.	The committee appreciates the input.
43.	Eisener, Gregory Special Counsel Severson & Werson Irvine	A	No specific comment.	The committee appreciates the input.
44.	Eli, Daniel Partner Black, Compean, Hall & Eli Lost Angeles	A	No specific comment.	The committee appreciates the input.
45.	Elite Builder Services By: Tom Bond, President Walnut Creek	A	We at Elite Builder Services, support the proposed changes.	The committee appreciates the input.
46.	Ellison Framing Inc. By: Matthew Ellison, Owner	A	The law is way too loose for determining eligibility of suits against contractors. We need specifics on what we	The committee notes the commentator's agreement with the proposal, but further notes that

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	Commentator	Position	Comment	Committee Response
	Brentwood		have done. It's cost hundreds of thousands of jobs. The only ones profiting are the attorneys.	the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
47.	Ericksen, David A. President/Shareholder Severson & Werson San Francisco	A	I was a part of the committee which drafted these interrogatories. It is important for the efficiency of the construction litigation process that it take place. Construction is complicated and when it goes wrong, there are often multiple parties. Standard discovery has not worked such that we have historically been forced to resort to expensive Special Masters as the only vehicle to provide for an efficient exchange of information. I have one current case involving a public entity plaintiff where the Town and its Contractor have each issued well over 500 special interrogatories in a relatively straightforward dispute and it would have just increased as we are now up to 13 parties. Only the lawyers "win" in this process. These form interrogatories would avoid all of that.	The committee appreciates the input.
48.	Feher, Thomas Bakersfield	A	No specific comment.	The committee appreciates the input.
49.	Feldman, Ian Irvine	A	No specific comment.	The committee appreciates the input.
50.	Fleischman, Steven Encino	A	No specific comment.	The committee appreciates the input.
51.	Flynn, Laura Sagmeister San Francisco	A	No specific comment.	The committee appreciates the input.
52.	Ford, Walker, Haggerty & Behar By: William Haggerty, Founding Partner Long Beach	A	No specific comment.	The committee appreciates the input.
53.	Frankel, Martin	A	No specific comment.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
	Saratoga			
54.	Fresno Plumbing By: Debbie Kumpe, Construction Office Manager	A	Very necessary, as these claims are usually baseless, most claims have never called for a service or warranty call. We should have the right to fix problems before going to court.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
55.	Gentes, Stephen President Gentes and Associates San Diego	A	No specific comment.	The committee appreciates the input.
56.	Georgouses, Thomas J. Fresno	A	No specific comment.	The committee appreciates the input.
57.	Goedde, Ron Acting C.F.O. CVC Holding Corp Sacramento	A	<p>CVC Construction Corp has been involved in the residential construction business in California for over 20 years. Over the Company's long business tenure as a concrete subcontractor there have been few instances where any of the thousands of residential concrete slab poured by CVC Construction have had any structural issues. And in those rare instances where real problems were noted the Company has always been there to make any and all necessary repairs.</p> <p>This view and philosophy of standing behind our work has not prevented or reduced in any way the hundreds of Construction Defect complaints the Company has received over the years. In a vast majority of these complaints the "defects" noted are identical, copied from one complaint to the next. There have been few efforts in the process to allow any fixes, which would be minimal in cost, since this would reduce the final settlement value to the attorneys or plaintiffs. Interestingly, little if any of the</p>	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.

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			<p>“greenmail” funds finally paid in settlement are ever used to make defect complaint repairs, since in fact most are more cosmetic than anything.</p> <p>While some of the construction defect matters have a valid basis, the vast majority of the complaints and homes involved have simply become a cottage industry business for several law firms in California. The sad part of this story is that the cost of Construction Defect litigation adds thousands of dollars to the cost of a new home, making the hurdle a little higher for the average citizen to get financing approval. Further, this added cost increases the monthly mortgage payment for homeowners over the life of their loan, who are already financially stressed. Not to mention the legal defense costs borne by construction subcontractors, which in the CVC’s history has in some years been in the hundreds of thousands of dollars.</p> <p>There have been a number of efforts over the years to modify these complaints wherein they would focus on real construction issues and provide remedies to the homeowners. Most have been defeated or watered down in the state legislature by a very powerful ABA lobby.</p> <p>I strongly support the goal of SPR-12-14, that would allow the homeowner to identify any defect issues that could then be addressed by the many contractors and subcontractors who wish to stand behind their work. Rather than the current process that provides for generic, carbon copy defect complaints that make repairs unfeasible. The primary goal in today’s process seems to be settlement payments rather than any real repairs.</p>	

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			I would urgently ask for your support on SPR-12-14 so that real homeowner problems can be addressed, and that the cost of a new home can become more affordable to the many who still see homeownership as part of their personal dream.	
58.	Gokoo, Robert Santa Ana	A	No specific comment.	The committee appreciates the input.
59.	Gray-Duffy LLP By: John J. Duffy, Partner Encino	A	No specific comment.	The committee appreciates the input.
60.	Gruwell, James Sergeant Murrieta	A	No specific comment.	The committee appreciates the input.
61.	Haight Brown & Bonesteel By: Chandra Moore, Partner San Diego	A	No specific comment.	The committee appreciates the input.
62.	Haluck, William Partner Koeller, Nebeker, Carlson and Halluck LLP Irvine	A	No specific comment.	The committee appreciates the input.
63.	Harrelson & Associates By: Thomas M. Harrelson, Burlingame	A	No specific comment.	The committee appreciates the input.
64.	Hart, Peter Office Leader LeCalirRyan LLP San Francisco	A	No specific comment.	The committee appreciates the input.
65.	Haydon, Brian Attorney	N	Although they are generally appropriate, the unfettered use of these form rogs will lead to endless and	The committee notes that parties have the right to conduct discovery, including asking

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	Donahue Davies Folsom		unnecessary work for both plaintiffs & defendants. This will just lead to more "jobs for the boys" at our client's expense. If a party needs the answer to a question, it is free to propound a special interrogatory. Now it can even use an excerpt from these well drafted rogs. But let's not have counsel simply checking all of the boxes, which is precisely what will happen.	interrogatories, in construction litigation cases as in other civil cases. The committee has concluded that the form interrogatories will provide a standard form for the questions, avoiding issues of ambiguity or vagueness in specially drafted interrogatories, and making both the discovery and any motions to compel more predictable.
66.	Haynie Construction Inc. By: Jim Haynie, CEO Lincoln	A	I am a small interior trim contractor. Interior trim is doors, window sills, baseboards, shelves etc.,. none of my work has anything to do with the structural integrity and yet I am named in every law suit with boiler plate wording claiming some sort of defect. I have inspected many of these homes in these suits and I have never found any of these alleged defects. they only want money. Something has to change. Why would any contractor want to build a house when you know you are going be sued, not because you did anything wrong but because they can!!!	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
67.	Heffernan Professional Practice Insurance By: George DeWalt JD, Senior V.P. Santa Ana	A	No specific comment.	The committee appreciates the input.
68.	Heritage One Door & Building Services By: Diane Gardemeyer, HR Manager Highlands	A	No specific comment.	The committee appreciates the input.
69.	Hightower, Sharon L. Attorney ADC San Jose	A	The proposed changes should be adopted.	The committee appreciates the input.

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70.	Hollins Law By: Andrew Hollins, Attorney Irvine	A	No specific comment.	The committee appreciates the input.
71.	Horiuchi, Megmui Senior Associate Law Offices of Aaron B. Booth Los Angeles	A	No specific comment.	The committee appreciates the input.
72.	Howard, Ben Neil Dymott APLC San Diego	A	No specific comment.	The committee appreciates the input.
73.	Howard, Jr., Joseph C. Attorney Redwood City	A	No specific comment.	The committee appreciates the input.
74.	Israel, Mark Daniels, Fine, Israel, Schonbuch & Lebovits Los Angeles	A	No specific comment.	The committee appreciates the input.
75.	iStairs, Inc. By: Bryan Worrall, President Rancho Cordova	A	No specific comment.	The committee appreciates the input.
76.	Jeff Landon Poway	A	No specific comment.	The committee appreciates the input.
77.	Johnson Air By: David Teter, Contract Administrator Fresno	A	No specific comment.	The committee appreciates the input.
78.	Jones, Ellwood L. Folsom	A	No specific comment.	The committee appreciates the input.
79.	JR Construction Consulting, LLC By: John Romero, President/member	A	No specific comment.	The committee appreciates the input.

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	Dana Point			
80.	Kent Law By: Shannon K. Parke, Attorney Reno, NV	A	Form interrogatories specific to construction defect cases will provide more efficient and effective initial discovery procedures helping to better streamline this rapidly growing field of litigation.	The committee appreciates the input.
81.	Kirtland & Packard LLP By: Robert A. Muhlbach, Partner El Segundo	A	No specific comment.	The committee appreciates the input.
82.	Kloeppe, Nicholas R. Attorney-Partner	A	No specific comment.	The committee appreciates the input.
83.	La Follette, Johnson, DeHaas, Fesler & Ames By: Michael A. Bell, Associate Riverside	A	No specific comment.	The committee appreciates the input.
84.	la Rose, Rev'd. Svend Oakland	A	This is a fine update that makes a lot of sense to me, as a lay person involved. I can see how it would be a lot clearer for the idiots who make up the majority of this case type.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
85.	Lampasona, Maria Oakland	A	No specific comment.	The committee appreciates the input.
86.	Landess, Bret R. Attorney Oium Reyen & Pryor San Francisco	A	No specific comment.	The committee appreciates the input.
87.	Law Office of Kurt Boyd By: Kurt Boyd, Esq. Woodland Hills	A	No specific comment.	
88.	Law Office of Lawrence E. Lannon, APC By: Lawrence Lannon, partner	A	No specific comment.	

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	Irvine			
89.	Law Office of Malcolm H. Stewart By: Malcolm H. Stewart, Owner Shaver Lake	A	No specific comment.	No response required
90.	Law Offices of Danil Monteleone By: Danil Monteleone, Managing Partner Reseda Ranch	N	<p>My name is Danil Monteleone, managing partner of the Law Offices of Danil Monteleone. My firm represents homeowners, apartment owners, and condominium owners. Currently, our attorneys represent approximately 3,000 clients in construction defect (“CD”) cases throughout the state. Our cases involve as few as 3 homes and as many as 560 homes. I have been a plaintiffs’ attorney since 1997. Prior to that, I represented major developers, contractors, and insurance companies in CD litigation. I practiced civil defense for seven years. As such, I have thorough experience on both sides of the discovery arena, as it specifically relates to CD litigation.</p> <p>Consensus of Mediators and Referees The process of drafting the interrogatories, which were over the objection of the plaintiffs’ counsel to begin with, did not include “consensus” of the top mediators and referees in the field of construction defects. I request that the committee contact as many well-known mediators and referees in the industry as possible to determine whether these interrogatories will accomplish the stated goals of this committee.</p> <p>Comment Inquiry 1: Does the proposal appropriately address the stated purpose? Comment: No. Discovery Stay Is the Standard of Practice and It Works</p>	<p>The committee notes that the proposal was circulated for public comment for two months, and was sent to, among others, bar organizations representing construction counsel.</p> <p>Nothing in the proposal precludes the use of a CMO and discovery referee, or the cooperative exchange of expert information under a stay of</p>

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			<p>Nearly every CD case in California is litigated pursuant to a case management order (“CMO”). The most efficient and cost effective way of resolving CD cases is with a CMO and a discovery referee. The CMO invariably stays all traditional discovery, while requiring reciprocal CMO discovery from both the plaintiffs and the defense parties. There are currently no form interrogatories in CD cases, and none are necessary, because the vast majority of cases are resolved through the cooperative exchange of expert information facilitated by a discovery referee.</p> <p>As every CMO stays traditional discovery, and requires the parties to respond to CMO discovery, discovery motions are rare in CD cases. Further lessening the burden on the court is the reality that discovery referees are appointed to assist the parties in nearly every case. Under the current system, the courts are rarely called on to address discovery disputes. Requiring a CMO and a discovery referee ensures that discovery disputes are not clogging court dockets.</p> <p>The only thing predictable about the proposed interrogatories is that law and motion hearings are sure to follow. The adoption of these questions will guarantee that the number of motions will dramatically increase and that the motions will be heard in front of a court and not a referee. This is because the proposed interrogatories request responses which lay homeowners cannot possibly provide and because they will propound at a time when no discovery referee has been appointed.</p> <p>Contention Interrogatories Such As 305.11 and 312.1</p>	<p>traditional discovery.</p> <p>However, the committee notes that parties are entitled to seek verified interrogatory responses as part of a general discovery process and, particularly in small cases, the use of standardized interrogatories focused on construction litigation issues, will be helpful.</p> <p>If, as the commentator notes, most cases proceed under a CMO and stay of traditional discovery, then the form will not be used in those cases and hence it is unlikely that motions would increase. To the extent traditional discovery proceeds and the form interrogatories are used, the committee believes the use of standardized form interrogatories focused on issues in construction defect litigation will lessen the need for motions.</p> <p>If a responding party believes an interrogatory</p>

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			<p>Will Inevitably Lead To Discovery Disputes Contention interrogatories directed to homeowners are not new. The proposed interrogatories include the most disputed questions in CD history. The “simple” questions that the council is proposing are what gave rise to the discovery stay and CMO process in the first place. The problem with the contention interrogatories is that there will always be a dispute as to the timing and the sufficiency of the answers. The questions seem on their face to be simple; however, they are not. They cannot be answered in any meaningful way without the completion of the plaintiffs’ investigation. Once this has occurred, it is much more efficient to simply depose the experts regarding their findings.</p> <p>Even a single home contains thousands of code violations and construction defects that are hidden within the structure. They are found under roof tiles, behind drywall and stucco, or in the concrete and soil. In instances where the builders used the wrong nails or staples, these errors constitute thousands of individual violations. Each truss connection, pipe connection, hold down, anchor bolt, valley pan, roof flashing, etc., is the subject of the action and part of the necessary discovery. If the interrogatories are propounded prior to production of the plans, contracts, documents, destructive testing, plaintiffs’ interrogatories, and person most knowledgeable depositions, no substantive responses can be provided. Plaintiffs’ anticipation of these proposed contention interrogatories will necessarily require plaintiffs to launch their own discovery in the form of special interrogatories.</p>	<p>prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.</p>

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			<p>Plaintiffs’ attorneys have literally thousands of special interrogatories “in the can” requiring the builders of the homes to disclose how, where, and why they did not comply with the thousands of building code requirements, plans and manufacturers’ specifications. Rather than responding to these basic questions, builders provide evasive answers that lead to discovery disputes. The war is on. Because practitioners in this area found traditional written discovery to be of very limited value, the adopting of CMOs requiring specific discovery became the standard of practice for the last twenty years. It works.</p> <p>Comment Inquiry 2: Would the proposed form interrogatories be appropriate and helpful in construction litigation as limited in the instructions? Comment: No.</p> <p>Allowing the use of these proposed interrogatories in small cases (involving five homes or less) and in complex cases upon a showing of good cause, would result in unnecessary burdens on the courts, for the reasons stated above.</p> <p>A Case Involving A Single Home Can Be The Most Difficult For The Court To Manage A single family home case requires immediate judicial management because the resolution is so sensitive to the cost and fees expended. Litigation costs, attorney’s fees and expert costs quickly exceed the entire value of the property. The case quickly becomes impossible to settle. Coverage becomes disputed more intensely. A quick survey of the jury verdicts around the state will confirm that the CD cases that are going to trial are those which</p>	<p>The committee notes that parties in construction litigation cases, as in other civil cases, have the right to conduct discovery, including seeking verified responses to interrogatories. The proposed form interrogatories does not add to that right, but is intended to simplify and standardize the process.</p>

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			<p>involve five single family homes or fewer. Trials happen in cases where the parties begin down a litigation path that starts with the very types of interrogatories the committee is now proposing.</p> <p>The fact that there are only a small number of homes in the case does not mean that the case is not “complex.” A single home case can still be “complex” because it may involve many separately represented parties and difficult insurance issues. Courts do not automatically deem cases “complex.” A trial judge may not recognize the complexities of the issues built into the complaint and not deem the case complex, even though it should be designated as such. If the court fails to make the proper designation, it will be quickly inundated with law and motion. The court will spend hours deciding discovery disputes until it recognizes that the case is complex and orders the appointment of a referee. Let the parties work out the discovery program. The form interrogatories should not apply.</p> <p>The Proposed Interrogatories Should Not Be Allowed In “Complex” Cases</p> <p>The restriction that the interrogatories not be used in complex cases without a showing of good cause is not a sufficient protection for the court or the parties. If the proposed interrogatories are formally adopted for use in small cases, courts will automatically assume that they are appropriate for all cases and should be used. The “good cause” will simply be that the Judicial Council has adopted these interrogatories and that they exist.</p>	<p>The committee disagrees that judicial officers will fail to apply a good cause standard in determining whether the form interrogatories are appropriate in complex cases.</p>

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			<p>CD cases often involve large numbers of homes, hundreds of plaintiffs, and dozens of defendants and cross-defendants. The proposed interrogatories should never be used in such a case. The cost of formal discovery in such a large case is extremely damaging to all the parties involved. The cost to the defense parties would be incredible if hundreds of plaintiffs were allowed to propound these voluminous interrogatories on the defense. Likewise, the burden on the plaintiffs would be extreme because many of the interrogatories request information which the plaintiffs cannot answer as they did not construct the homes. The result of parties propounding these questions on one another would trigger endless motions to compel and motions for protective orders. This is the exact opposite of the result the proposed interrogatories are designed to obtain.</p> <p>Comment Inquiry 3: Should the instructions allow the form interrogatories for use in somewhat larger residential construction cases as well? Comment: No, for the reasons stated above.</p> <p>Comment Inquiry 4: Should the defined terms remain formatted as in the attached, in boldface and all capital letters or, in order to make the form more readable, be changed to just boldface, without capitals? Comment: Please do not use all caps! Few practitioners will comment on this section because they cannot proudly claim as I, to have the gift of being severely dyslexic. Dyslexia is a broad category and unfortunately a label imposed upon people who have</p>	<p>The committee has concluded that whether the use of the form interrogatories, or any of them, is appropriate in a complex case is best left to the judicial officer in that case.</p> <p>See the comments above.</p> <p>The form has been modified in light of this comment, to delete the use of all capital letters to indicate defined terms.</p>

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			<p>difficulties with language. Dyslexia can be used to describe people with difficulties in reading, writing, spelling, speaking, listening and other related language issues. Thanks to my genes, I have issues with all of the above. The percent of the population that has difficulties with language is far greater than the school system is willing to admit.</p> <p>There is ample scientific data that confirms that reading the printed word becomes much more difficult where all capitals are used. Many people, myself included, read by word recognition (i.e. the shape of the word). I can tell you that using all caps makes words very, very, difficult to read. Bold is sufficient.</p> <p>Being dyslexic does not mean that a person is stupid or incapable. It means that the brain processes language differently. I can read with tremendous speed and comprehension as long as the text does not contain weird fonts, italics or ALL CAPS.</p> <p>Thank you for inquiring about the all caps issue. Highly educated people do not understand the difficulty in reading all caps text unless they have had to struggle with it. Your sensitivity to this issue is greatly appreciated.</p> <p>Final Comments Mediation Privilege</p> <p>The instructions to all parties in section 1, subsection (d) state that the interrogatories are not intended to require disclosure of information that is protected by mediation</p>	<p>The committee in no way intends this proposal to affect any mediation privilege. If a responding party believes an interrogatory prematurely</p>

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			<p>confidentiality. Despite this statement, a large number of the interrogatories could not be answered without waiving mediation protections. CD cases normally settle because the parties engage in a productive exchange of expert information through mediation. The proposed interrogatories put this process in jeopardy. For example, number 305.11 requires the homeowner to describe in detail the defects in their home. This is not possible to answer without referring to expert reports that are prepared by construction experts for the purposes of mediation. Homeowners may seek protective orders to prevent the disclosure of this mediation protected information. Likewise, defendants may bring motions to compel.</p> <p>For years, defendants have been trying to defeat the mediation privileges articulated in the California Supreme Court Case <i>Rojas vs. Superior Court</i> (2004) 33 Cal. 4th 407. The <i>Rojas</i> court articulated the importance of the mediation process and the court’s interest in maintaining the “candid and informal exchange regarding events in the past” through implementation of the mediation privilege established by the Evidence Code: “One of the fundamental ways the Legislature has sought to encourage mediation is by enacting several “mediation confidentiality provisions.” (Foxgate, supra, 26 Cal.4th at p. 14.) As we have explained, “confidentiality is essential to effective mediation” because it “promote[s] ‘a candid and informal exchange regarding events in the past . . . This frank exchange is achieved only if participants know that what is said in the mediation will not be used to their detriment</p>	<p>requires information that is the subject of expert opinion and protected by the work-product doctrine, or that falls within the mediation privilege, then, as with any interrogatory, an objection on that basis may be proper.</p>

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			<p>through later court proceedings and other adjudicatory processes.’ [Citations.]” (Ibid.) “To carry out the purpose of encouraging mediation by ensuring confidentiality, [our] statutory scheme . . . unqualifiedly bars disclosure of” specified communications and writings associated with a mediation “absent an express statutory exception.” (Id. at p. 15.)</p> <p>Plaintiffs cannot and will not provide the “frank exchange” of expert opinions required for a resolution without the protection of the mediation process. This is because defense parties have been attempting to use mediation protected information to damage the property value of homeowners and cloud their titles (as was attempted in the cities of Clovis and Fresno). Many of these proposed interrogatories cannot be answered without destroying the mediation privilege.</p> <p>Interrogatories are Never the Correct Approach in CD Cases</p> <p>One of the primary risks of these proposed interrogatories is that many defense parties will propound the same or very similar questions on every plaintiff in the case. Duplicative discovery will be inevitable. When parties want to punish each other with litigation expenses, neither will provide any meaningful expert opinions until that expert is deposed. The court will spend hours trying to determine what an acceptable answer to the interrogatories should be. Those answers will differ on every question and every case depending on the status of inspections, depositions, testing of homes, and the defendants’ discovery. The court will be confronted with endless</p>	<p>The committee disagrees that interrogatories are never appropriate in construction defect cases. To the extent that the form interrogatories are abused or used in such a way to require duplicative discovery, objections are appropriate. In cases in which “ parties want to punish each other with litigation expenses” , the parties will be able to do that whether or not these form interrogatories exist. In cases in which parties act reasonably, the form interrogatories will be another tool for parties to use and should prove helpful to parties and courts.</p>

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			<p>motions to compel and motions for protective orders. In CD cases the expense of formal discovery is a powerful bargaining chip that all parties can use to facilitate settlement of the case. Allowing these proposed interrogatories to be propounded early in the case would reduce the chances that the cases will settle. If the expense of discovery is incurred too early, it cannot then be used as an incentive to settle the case. When cases don't settle, they end up in front of the court and expend our valuable judicial resources.</p> <p>These interrogatories should not be adopted at all. However, if they are, they should only apply in cases involving five homes or fewer and never in "complex" cases.</p>	
91.	Law Offices of Douglas Harty By: Douglas Harty, Partner Bakersfield	N	<p>I have been involved in Construction Defect litigation for almost 30 years and have participated in the evolution of discovery during that time. I have represented developers, subcontractors and homeowners. Form interrogatories of any kind do not have a meaningful place in such claims. In the past when they were used, the parties simply asserted work product and other objections because the information is almost entirely expert witness opinion. This invariably resulted in law and motion hearings with the attendant delay and cost.</p> <p>The questions being asked here about the background, education, and opinions of homeowners is not relevant to such claims and does not provide any meaningful information to evaluate the claim.</p> <p>No one can dispute the fact that the Case Management</p>	<p>The committee notes that parties have the right to conduct discovery, including seeking verified responses to interrogatories, in construction litigation cases as in other civil cases. The committee has concluded that the form interrogatories will provide a standard form for the questions, avoiding issues of ambiguity or vagueness in individually drafted interrogatories, and making both the discovery and any motions to compel more predictable.</p> <p>The committee disagrees.</p> <p>In complex cases in which discovery is conducted</p>

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			<p>Order protocol which is now in place is far superior to the old CCP exchange of interrogatories and Request for Production. It gets the needed information in the hands of the defense attorney and their clients in an expeditious and meaningful fashion. It works! This has come about for 2 simple reasons: 1) It allows the immediate exchange of expert opinion, the only information that matters, and 2) the information is exchanged under the mediation privilege avoiding the gamemanship which occurs otherwise.</p> <p>As a defense attorney, I served similar interrogatories to address statute of limitations issues and it was never productive because plaintiff attorneys are not going to allow their client to undermine their case. It always comes down to the expert's opinions in any event. These proposed interrogatories are a giant step backward in the construction defect litigation forum. We have been there, done it, and it didn't work.</p>	<p>under a Case Management Order (CMO), the form interrogatories may only be used upon a showing of good cause to do so to the court. Even in smaller cases, the proposed form does not preclude the use of a CMO.</p>
92.	Law Offices of Eduardo Robles By: Eduardo Robles, Attorney San Lorenzo	A	No specific comment.	The committee appreciates the input.
93.	Law Offices of Jacobsen & McElroy By: Karen Jacobsen Sacramento	A	The proposed construction form interrogatories will be beneficial in the cases where they apply to allow for the exchange of basic information in the discovery process. They include many areas of inquiry and are very detailed. I recommend that they be adopted.	The committee appreciates the input.
94.	Law Offices of Katherine Gallo By: Katherine Gallo, Discovery Referee Foster City	A	I was the original chair of the committee to create the Form Interrogatories back in the spring of 2007. When creating the original draft of the form interrogatories it was very important to plaintiff's counsel that there be	The committee notes the commentator's agreement with the proposed form. The committee appreciates the comment on the limitation on the use of the form interrogatories,

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			<p>some limitation on how the interrogatories be served. I proposed the limitation to 10 houses, which was agreed upon by both the plaintiff and defense side. My rationale was if it is more than 10 houses it would be deemed complex, there would be a special master/discovery referee involved and/or the matter would be on a direct calendar. Thus the matter would be case managed. At no time during the last 5 years, either with the original committee or the five of us who finalized the interrogatories, was there an agreement to reduce the interrogatories to five or less houses. I recommend that the interrogatories be changed back to the original 10 houses limit.</p> <p>As a discovery referee, it is my opinion that these are good interrogatories and helpful in ALL construction matters. They will be a benefit to the discovery process and there will be fewer discovery motions, as the interrogatories will be per se approved as to form. This will also enable the parties to be more prepared for mediation and/or court ordered settlement conferences thus creating a better chance resolving the matters prior to trial. Even if the parties go to trial, they will be better prepared and not creating an unnecessary long trial as they do discovery on the witness stand.</p> <p>The multiple house cases shouldn't dictate the rest of the industry. They are a very small minority of the construction cases-- ~5%. It is my understanding that the majority of construction cases are single-family houses less than \$100K.</p>	<p>but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court finds good cause for the asking party to do so.</p>

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			<p>The argument that it is not economical for plaintiffs to litigate if they have to respond to the interrogatories is also not persuasive. There are other venues for the small damage multiple house cases. They could file a Limited Jurisdiction Civil Action where the discovery would be limited or a homeowner could go to small claims which is now up to \$10K with no Discovery.</p> <p>After five years, hundreds and hundreds of man-hours, and working with the leaders in the construction litigation field, it is my position that the interrogatories should remain intact with the limitation raised back to the recommended 10 houses.</p>	
95.	Law Offices of Lori B. Feldman By: Lori B. Feldman Attorney at Law San Rafael	A	No specific comment.	The committee appreciates the input.
96.	Le, Christina Attorney Archer Norrisl PLC Newport Beach	A	No specific comment.	The committee appreciates the input.
97.	Leary, Patricia Los Altos	A	No specific comment.	The committee appreciates the input.
98.	Les Eng Santa Monica	N	<p>Construction defect litigation comprises a substantial portion of my practice. I oppose the adoption of any form of the proposed "Form Interrogatories - Construction Litigation."</p> <p>Construction litigation relies heavily upon the specialized knowledge, skill, experience, training, and education of expert witnesses from the construction professions and</p>	The committee notes that parties have the right to conduct discovery, including seeking verified responses to interrogatories, in construction

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			<p>trades. As laypeople, plaintiff homeowners lack the requisite understanding of compliance with regulatory law and technical aspects of homebuilding; thus, it stands unreasonable to expect such plaintiffs can provide meaningful answers to questions such as interrogatories 312.1 and 313.1.</p> <p>The proposed interrogatories require plaintiff homeowners to testify under oath as to matters which are beyond their ken and knowledge. Such proposed discovery will require homeowners to testify by verified discovery responses as to matters of which they have little or no knowledge, only to be subject to later cross-examination before a jury as to such testimony: the ultimate effect will be confusion, undue consumption of time, and prejudice.</p>	<p>litigation cases as in other civil cases. The committee has concluded that the form interrogatories will provide a standard form for the questions, avoiding issues of ambiguity or vagueness in individually drafted interrogatories, and making both the discovery and any motions to compel more predictable.</p> <p>The majority of the questions ask specific questions within the personal knowledge of the parties. If a responding party believes an interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.</p>
99.	Lifter, Jill J. Shareholder Ryan & Lifter San Ramon	AM	<p>A few comments:</p> <ol style="list-style-type: none"> 1. The definition of “builder” should track with the Civil Code definition in cases where SB800 applies. 2. 303.7 addresses contractor’s licenses, but should also include professional licenses and certifications. 3. I do not think that 304.1(d) should include provision of the name and telephone number of the claims person handling the matter. This information is neither relevant nor likely to lead to the discovery of admissible evidence. 	<ol style="list-style-type: none"> 1. The definition does not track completely with Civil Code section 911 because that provision is limited to residential builders only, and does not make a distinction between builder and contractor, as done in this form. 2. The form has been modified in response to this suggestion. 3. The committee agrees and this subsection has been removed from the form.

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			<p>4. 304.1(f) should say “entity for whom one insured”</p> <p>5. [in 304.1(g) The use of the phrase “the insurer claims is potentially applicable” is ambiguous to me. Is the intent to inquire as to the amount of aggregate limits the insurer contends remains?</p> <p>6. 305.4 is grammatically incorrect and is missing the period at the end of the sentence; “is held” should be at the end of the sentence.</p> <p>7. There should be an interrogatory inquiring as to whether a plaintiff who is not an original owner of the property received an assignment of rights from the prior owner. Likewise, there should be an interrogatory inquiring as to whether a plaintiff who has sold the property retained the rights in the litigation or assigned those rights to the purchaser.</p> <p>8. 313.2 is very awkward. What does it mean to describe a specific concealment that was concealed?</p> <p>9. The whole series of interrogatories in section 314.0 is problematic. Consider a general contractor’s cross-complaint asserting claims against numerous subcontractors. Construction contracts are typically voluminous and these interrogatories become hopelessly overbroad. Also, in 314.7, “CONTRACT out” should be “subcontract.”</p>	<p>4. The form has been modified in response to this suggestion.</p> <p>5. The committee disagrees with this comment..</p> <p>6. The period has been added to this interrogatory. The committee disagrees with the remainder of the suggested edit.</p> <p>7. The committee disagrees that this query is needed in form interrogatories, although it may be appropriate in specific cases.</p> <p>8. The committee disagrees that this query needs to be modified.</p> <p>9. The committee disagrees that the series of queries regarding contracts, which is modeled on a similar series in the general civil form interrogatories. The fact that the information may be voluminous does not make it irrelevant.</p>

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			<p>10. 321.4 is unrealistic—specify all dates on which a contractor worked on the property? Why? Start and stop dates may be hard enough to determine.</p> <p>11. The heading for section 323.0 is improperly limited to Manufacturing Subcontractors as there are many manufacturer defendants and cross-defendants which are not subcontractors.</p> <p>12. Interrogatory 15.1 has always been troublesome. 324.1 is identical and suffers from the same problems: The primary problem is that it essentially requires what amounts to a verified answer to an unverified complaint. In addition, the allegations of the complaint are rarely specific enough to provide a meaningful response.</p> <p>Addressing the inquiries about the propriety of the interrogatories in general and the circumstances in which it they should be used, my thoughts are that it might be useful to have a set of form interrogatories tailored to construction defect cases. They should not be limited to cases involving five or fewer homes. The only reason for this limitation (or any limitation based upon the number of homes) would be to exempt the vast majority of cases involving single family homes from use of the interrogatories. They are actually probably more useful in those cases than in the smaller cases.</p>	<p>10. The committee disagrees. In some instances, specific dates may be relevant, or there may be several separate periods of work for which the asking party wants to know the start and stop dates. If the question is overly burdensome in a particular case, an objection to that effect may be proper.</p> <p>11. The form has been modified in light of this suggestion.</p> <p>12. The committee notes the comment but, as noted by the commentator, this interrogatory is modeled on one in the general civil interrogatories.</p> <p>The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, they should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse. They may also be used in commercial property construction cases, and in cases deemed complex by the court they may be used if the court finds good cause for the asking party to do so.</p>

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			Insofar as the format is concerned, bold face without all caps would be appropriate for definitions.	The form had been modified to delete the use of all capital letters to designate defined term, using a only a bold font to designate them.
100	LoCocoSmith APC By: Nina LoCoco, Managing Partner San Diego	N	<p>The attorneys at the firm of LoCoco • Smith have practiced construction defect litigation for over 20 years. Every attorney in our firm is very concerned about the proposed Form Interrogatories for Construction Litigation being considered by the Judicial Council. We appreciate the Judicial Council’s attempt to regulate the discovery process of construction defect cases. However, in reviewing the proposed interrogatories, we believe, even used in cases involving five homes or less, that this specific discovery vehicle will have a chilling effect upon construction defect litigation, deterring most homeowners from pursuing their claims, lead to costly discovery disputes and force plaintiffs’ attorneys to disclose information that is presently protected by the work product and mediation privileges.</p> <p>Construction defect litigation is initiated by homeowners’ dissatisfaction with the poor construction of their homes. However, homeowners typically do not have an understanding of regulatory law and code compliance which governs the construction of their homes to be able to provide cogent responses to such proposed interrogatories as 312.1 and 313.1. These interrogatories will only serve to frustrate homeowner plaintiffs trying to respond to questions of which they have no knowledge or expertise. The Court in Miller v. Los Angeles County Flood Control District (1973) 8 Cal.3d 689,702-03 stated, “The average layman has neither training nor experience</p>	<p>The committee notes that parties have the right to conduct discovery, including seeking verified responses to interrogatories, in construction litigation cases as in other civil cases. The committee has concluded that the form interrogatories will provide a standard form for the questions, avoiding issues of ambiguity or vagueness in individually drafted interrogatories, and making both the discovery and any motions to compel more predictable.</p> <p>The majority of the questions ask specific questions within the personal knowledge of the parties. If a responding party believes an interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, or falls within the mediation privilege, then, as with any interrogatory, an objection on that basis may be proper.</p>

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			<p>in the construction industry and ordinarily cannot determine whether a particular building has been built with the requisite skill and in accordance with the standards prescribed by law or prevailing industry.”</p> <p>Homeowner plaintiffs must rely upon their designated forensic experts in the field of construction to investigate their claims. Therefore, if required to respond to these form interrogatories, plaintiffs would be forced to disclose information that is otherwise work product and mediation privileged. Presently in most construction defect cases, both plaintiffs and the defense will stipulate that the entire case be taken out of the Code and proceed according to a court’s Case Management Order which manages all discovery. Written discovery is limited to that which is court-ordered and under the supervision of a “discovery master.” Discovery disputes are brought before the discovery master, and if not settled, then and only then proceed to a formal motion before the court. The case proceeds under a court-ordered timeline which provides for the sharing of plaintiffs’ expert reports and photos before anything else happens in the case – defense site inspections and mediations. Presently, the defense receives the information they claim they can get only in the proposed interrogatories through a Case Management Order which does not make them wait until 50 days prior to trial to discover what the plaintiffs’ experts have to say. They hear what the plaintiffs’ experts have to say within the first 60 days of litigating a construction defect case.</p> <p>Frankly, the impetus for these form interrogatories is to inundate both the homeowner/plaintiffs and their attorneys</p>	<p>The proposed form does not preclude proceeding with discovery under a CMO. If the parties have stipulated that discovery is to only be that ordered by the court, this form will have no impact, unless the court makes a finding of good cause for its use.</p>

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			<p>with meaningless written discovery to deter homeowner plaintiffs from pursuing their valid claims. These proposed interrogatories ask plaintiffs to make a conclusion of ultimate proof and to understand the elements of proximate cause.</p> <p>Construction defect cases can have as many as 30 parties participating in the litigation. These proposed interrogatories run the risk that many defense parties will propound the same or very similar questions on every plaintiff in the case. Responses to these proposed interrogatories will differ depending upon the status of inspections, destructive testing of homes and expert depositions. The defense will claim that homeowner plaintiffs' responses are not adequate and the courts will be inundated with motions to compel and protective orders.</p> <p>Form Interrogatories in a construction defect case are unnecessary. There is already a mechanism throughout the State of California for the management of construction defect cases. We urge the Judicial Council not to adopt the proposed interrogatories and allow the individual courts to regulate the discovery process of construction defect cases.</p>	<p>In cases designated as complex, the form interrogatories may not be used until the court makes a finding of good cause to do so. Hence in a case with 30 parties, the court would need to find good cause before the many defense parties could serve the interrogatories on every plaintiff.</p> <p>Nothing in this proposal would preclude an individual court to manage the discovery process in a construction defect case.</p>
101	LoSavio, Thomas Attorney Low Ball & Lynch San Francisco	A	No specific comment.	The committee appreciates the input.
102	Malanga, Gerald Partner Lattie Malanga Libertino, LLP	N	The proposed form DISC-005 should not be implemented. As a practitioner with seventeen years experience representing builders, developers,	The committee disagrees that the form interrogatories will defeat the exchange of information in construction cases.

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	Beverly Hills		<p>subcontractors, and most recently homeowners and property owners, it is my opinion that the proposed form interrogatories do more to defeat the traditional free exchange of information normally provided in construction defect litigation than to enable it.</p> <p>Those active in the construction defect bar are unique in that they have recognized that it is only through the free exchange of information that cases are able to be resolved in an efficient and cost conscious manner. Ordinarily through the use of Case Management Orders which contemplate a stay of traditional discovery, the parties set forth timelines that trigger the obligation of the respective parties to produce documents, complete investigations, respond to narrowly tailored interrogatories, and appear for deposition. All along the way the parties engage in mediation, conduct expert meetings, and otherwise work to bring about resolution of the case. By creating a set of Judicial Council form interrogatories much of this amicable relationship among professionals will be destroyed.</p> <p>The form DISC-005 interrogatories will open the door to expensive and protracted discovery disputes, burdening both the litigants and the court. Unlike other general liability actions where the plaintiff may be able to knowingly respond to how an accident occurred or describe the alleged conduct of a defendant giving rise to the action, the claims of a plaintiff in a construction defect action are almost entirely expert driven. Asking a homeowner plaintiff to describe the details surrounding the claim will require the premature disclosure of expert</p>	<p>There is nothing in this proposal that would preclude the appropriate use of a CMO from managing or staying traditional discovery where appropriate. However, generally, parties in construction litigation cases, as in other civil cases, have the right to conduct discovery, including seeking verified responses to interrogatories.. The committee has concluded that the form interrogatories will provide a standard form for the questions, avoiding issues of ambiguity or vagueness in individually drafted interrogatories, and making both the discovery and any motions to compel more predictable.</p> <p>The majority of the questions ask specific questions within the personal knowledge of the parties. If a responding party believes an interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.</p>

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			<p>witness opinion testimony, under oath, at a time when the investigation supporting that testimony has either not been completed or is in flux and the investigation concerning the claim continues. This situation will by necessity require an objection to the interrogatory on the basis of requiring premature disclosure of expert witness testimony. Such a response will then lead to a discovery dispute which will burden the parties with increased litigation costs and it will clog the court system.</p> <p>Unlike most other practice areas, the construction defect bar has developed a process that streamlines the litigation process, contains costs, and encourages resolution without the need to "litigate to the death" as some other practice areas seem prone to do. In the instance where a case may not resolve without the need for trial, the parties work together through a court appointed discovery referee to set forth discovery timelines and protocols in order to ensure that the parties are afforded every opportunity to prepare for trial. Implementing form DISC-005 will upset this process as it introduces more of a contentious approach to the exchange of information among parties with the imprimatur of the Judicial Council.</p> <p>Thank you for your consideration of these points as the Council weighs the decision of whether or not to implement form DISC-005.</p>	<p>Nothing in this proposal would preclude the construction defect bar from continuing to use streamlined litigation procedures. The parties can continue to work together to agree on discovery timelines and protocols. The proposed form is simply one more tool to be used in that process.</p>
103	Mann, Douglas Rancho Cucamonga	A	No specific comment.	The committee appreciates the input.
104	Matteoni, Paul Attorney	A	No specific comment.	The committee appreciates the input.

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	Lewis & Roca, LLP Reno, NV			
105	Mayall Hurley By: Mark S. Adams, Attorney Stockton	A	No specific comment.	The committee appreciates the input.
106	McGill, John Attorney Archer Norris Walnut Creek	A	No specific comment.	The committee appreciates the input.
107	McLennan, Laura Managing Partner Moor McLennan LLP Glendale	A	No specific comment.	The committee appreciates the input.
108	MCM Construction, Inc. By: Edmundo A. Puchi North Highlands	A	Form Interrogatories for Construction Litigation are long overdue.	The committee appreciates the input.
109	Meadows, Ken President/CEO Corona	A	No specific comment.	The committee appreciates the input.
110	Mercier, Alex Clemente	A	It's common sense.	The committee appreciates the input.
111	Metzger, Morgan Woodland Hills	A	No specific comment.	The committee appreciates the input.
112	Michael Kennedy Insurance Agency, Inc. By: Mike Kennedy, President El Cajon	A	No specific comment.	The committee appreciates the input.
113	Milgard Manufacturing By: Ray Faccenda, Director of Risk Management Tacoma, WA	A	I work with a national company that does a great deal of business in CA {we employ about 1,000 people in CA}. While CA represents about 15% of our national sales it accounts for 80% of our construction defect claims. Since	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help

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			we make the same window everywhere it has to come down to the business killing legal environment present in this state. Please help!	with discovery in this area.
114	Milstein Adelman, LLP By: Fred M. Adelman, Partner Santa Monica	N	<p>The proposed Form Interrogatories that the Judicial Council is considering adopting will have a chilling effect on homeowners seeking to bring these claims. It will require homeowners and their counsel to incur substantially more cost and time trying to respond to questions that are designed to be answered by construction experts pursuant to CCP section 2034.</p> <p>Their primary motivation behind this proposed discovery is to burden both the homeowner and their attorneys with meaningless written discovery. It is typical for construction defect firms (large and small) to stipulate to the entry of a Case Management Order to control and manage all discovery. In exchange for control and limitations, we typically produce our entire work product at the early stages of the case rather than 50 days before trial pursuant to the Code of Civil Procedure. This willingness to exchange information early and freely is what helps facilitate resolution and the avoidance of discovery costing seven figures on most cases – a savings realized by both the Plaintiffs and more so by the Defendants and their carriers.</p> <p>Construction litigation is primarily driven by the knowledge and proficiency of the experts designated in each case. The construction of a home involves elaborate engineering principles and specialized skill that the average homeowner simply does not have. The Court in <i>Miller v. Los Angeles County Flood Control District</i></p>	<p>The committee disagrees.</p> <p>There is nothing in this proposal that would preclude the use of a stipulated CMO and a stay of traditional discovery where appropriate.</p> <p>Parties in construction litigation cases, as in other civil cases, have the right to conduct discovery, including seeking verified responses to interrogatories.. The majority of the questions ask specific questions within the personal knowledge of the parties. If a responding party believes an</p>

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			<p>(1973) 8 Cal.3d 689, 702-03, carefully articulated the point by stating, “The average layman has neither training nor experience in the construction industry and ordinarily cannot determine whether a particular building has been built with the requisite skill and in accordance with the standards prescribed by law or prevailing industry.” In order to thoughtfully respond to questions such as interrogatory 312.1 and 313.1 plaintiff homeowners would necessarily require an understanding of compliance with regulatory law and aspects of homebuilding. It is completely unreasonable to assume plaintiffs would be likely to provide meaningful answers to interrogatories of this nature.</p> <p>By having to respond to these interrogatories plaintiffs would be disclosing information that is otherwise work product and mediation privileged. Several of the proposed interrogatories use the language “anyone acting on your behalf”, which by the definition provided includes plaintiff’s attorney. Through the use of this language plaintiffs may be deceived into offering information discussed with their attorney or information regarding details of the attorney’s work product. This is an underhanded means of obtaining information that opposing counsel is not entitled to because of the work product and mediation privilege.</p> <p>Furthermore, these interrogatories are duplicative, burdensome and ambiguous. Nearly all of the information requested in the interrogatories is either provided within the pleadings or will be provided through the litigation procedures. For example, the information sought in</p>	<p>interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.</p> <p>The committee disagrees that the interrogatories are duplicative, overly burdensome, or ambiguous. The propounding party has a right to seek verified interrogatory responses. If a party has no personal knowledge of the existence or</p>

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			<p>interrogatory 305.1 could be answered through expert discovery, which is more efficient and far less intrusive than lengthy form interrogatories. The information that interrogatory 312.1 attempts to seek out has already been set forth in the pleadings. Parties should aim to employ the least intrusive means possible to obtain the necessary information; these form interrogatories do not meet this goal and will only further complicate matters.</p> <p>The complexity and subject matter of these interrogatories would further confuse and deter many plaintiffs from pursuing their valid claims. Interrogatories inquiring into plaintiff's level of education and prior involvement in litigation are irrelevant and not reasonably calculated to lead to the discovery of admissible information. Interrogatory 312.1 is especially ambiguous and troublesome. It asks a plaintiff to make a conclusion of ultimate proof and understand the elements of proximate cause. From experience, plaintiffs do not have a legal education and have no basis to answer such a question. Many plaintiffs would find this task extremely daunting and would withdraw from the action. Plaintiffs with legitimate claims for faulty construction of their homes should not have to overcome such high hurdles to seek a remedy.</p> <p>It is my firm belief that form interrogatories of this nature are unnecessary. Plaintiffs are unable to provide information that can be relied upon during litigation because it requires a level of expertise that is only within the knowledge of experts. Although the Judicial Council attempts to alleviate some concern by limiting the</p>	<p>amount of damages or loss (requested in Interrogatory section 305.0) and must rely on an expert witness's opinion on this point, a response and objection on that ground may be appropriate. If the information as to violations of statutes, ordinances, or regulations that caused the construction claim (sought in interrogatory 312.1) is set forth in the pleadings, it is not overly burdensome for a responding party to provide that information in verified form in response to an interrogatory.</p> <p>If a responding party believes an interrogatory prematurely requires information that is the subject of expert opinion and protected by the work-product doctrine, then, as with any interrogatory, an objection on that basis may be proper.</p>

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			instances when these form interrogatories will be applied, this is not sufficient. Plaintiffs in all types of construction litigation cases will be discouraged from pursuing their claims for defects in their homes. For the reasons discussed above I vigorously oppose the adoption of the proposed Form Interrogatories - Construction Litigation, even as modified.	
115	Molander, Julia Partner Meckler Bulger Tilson San Francisco	A	No specific comment.	The committee appreciates the input.
116	Molgaard, Peter Special Counsel Severson & Werson LLP San Francisco	A	As a lawyer who frequently deals with construction defect claims, I find the current available form interrogatories inadequate and generally inappropriate. The current forms are obviously written for an incident that occurred over a short period of time (such as a car accident) and often are incomprehensible in the context of a construction claim. I strongly urge the adoption of this new specialized form interrogatories.	The committee appreciates the input.
117	Monty White LLP By: David H. Bremer, Of Counsel San Rafael	A	No specific comment.	The committee appreciates the input.
118	Moran, Kelly Riverside	A	No specific comment.	The committee appreciates the input.
119	Moriarty, Denis J. Lawyer Haight, Brown & Bonesteel, LLP Los Angeles	A	No specific comment.	The committee appreciates the input.
120	Moriarty, Sean San Francisco	A	No specific comment.	The committee appreciates the input.
121	Morris Polich & Purdy LLP	A	No specific comment.	The committee appreciates the input.

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	By: Douglas C. Purdy, Partner Los Angeles			
122	Murchison & Cumming By: Mark M. Gnesin, Attorney Santa Ana	A	No specific comment.	The committee appreciates the input.
123	Murphy, Jason San Francisco	A	No specific comment.	The committee appreciates the input.
124	Nellessen, Robert Attorney Santa Rosa	A	No specific comment.	The committee appreciates the input.
125	Nielsen, James Partner Nielsen Haley & Abbott LLP San Francisco	A	No specific comment.	The committee appreciates the input.
126	O'Dea, Gregory Attorney Partner Sacramento	A	No specific comment.	The committee appreciates the input.
127	O'Meara, Karen Woodland Hills	A	No specific comment.	The committee appreciates the input.
128	Orange County Bar Association By: Dimetria Jackson, President Newport Beach	AM	The OCBA believes that the Form Interrogatories-Construction Litigation appropriately address the stated purposes. However, more clarifying instructions are necessary as Section 1(a) states that their use is only limited by Section 2; however, the introductory language below the title should be clarified and added to Section 2 so counsel have guidance on when the interrogatories can be appropriately utilized.	The form has been modified in light of this comment, and the limiting instruction is now included in section 2(b) as well as directly under the title of the form.
129	Osboirn, Patrick Bakersfield	A	No specific comment.	The committee appreciates the input.
130	Pacific M Painting Inc. By: John Mullin, President	A	This Proposal makes PERFECT sense and would facilitate discovery in defect cases.	The committee appreciates the input.

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131	Pack, Garrett Chairman & Secretary Mark Company Orange	A	We have dealt with construction defect lawsuits continually in our business as a trade contractor (concrete & paving). Normally we had nothing to do with defects, but we are sued anyway because the plaintiffs sue every contractor who worked on the project. The plaintiffs invariably lack specific information on the defects. It takes substantial effort on our part and insurance companies legal staffs to extract us from the suit. Sometimes some type of settlement has to be agreed to even when we did not cause the defects. The present interrogatories are a waste of time. We very strongly endorse the New Form Interrogatories. They will greatly improve the efficiency of processing construction defect legislation.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
132	Perkins, Jim San Diego	A	No specific comment.	The committee appreciates the input.
133	Plumtree & Tran, LLP By: David Tran, managing partner Los Alamitos	A	As general counsel to the trades, we recognize the expenses related to a construction defect lawsuit, regardless of whether the claims are merited or merely baseless claims. By requiring specific allegations and discovery responses per claimed residences, it will give both sides of the action a quicker path to resolution of the case as each side can evaluate the seriousness of the claims. With this information, cases can be settled much timelier and reduce the courts' administrative expenses.	The committee appreciates the input.
134	Porter Law Group, Inc. By: William L. Porter, President Sacramento	A	I agree with the proposed changes. Run away Construction Defect Litigation must be reined in. Unfortunately, in many cases the claims made border on	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a

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			the fraudulent. In other cases, the process itself is not far from legalized extortion. I am hopeful that this step will help.	standardized set of form interrogatories to help with discovery in this area.
135	Poteet, Lawrence San Juan Capistrano	A	No specific comment.	The committee appreciates the input.
136	Potter, Nancy N. Attorney Murchison & Cumming, LLP Los Angeles	A	The standard form interrogatories are not well-suited to construction litigation. Specialized interrogatories would help streamline the process of procuring necessary and appropriate information so that parties could assess liability and damages in a timely manner and avoid burdening the court with discovery disputes.	The committee appreciates the input.
137	Powell, Holiday D. Morris Polich & Purdy Los Angeles	A	No specific comment.	The committee appreciates the input.
138	Production Framing, Inc. By: Christine Southerd, Account Manager Sacramento	A	No specific comment.	The committee appreciates the input.
139	Quinn & Kronlund, LLP By: Randy G. Lockwood, Attorney at Law Stockton	A	Construction defect litigation form interrogatories have been needed and will eliminate the need for non-uniform interrogatories crafted by various special masters, who usually control discovery in construction defect litigation.	The committee appreciates the input.
140	Reece Stair of Nevada, Inc. By: Lanette Reece, Secretary/Treasurer Folsom	A	As a stair rail installation company we have been included in lawsuits with only single story homes, no stair rail defects, or a very small percentage of homes with loose rails (which is usually not a construction defect, but a wear and tear issue). The lawyers representing us cannot get us out of the cases for months because there is no list of defects. Our insurance company has paid thousands for legal fees in cases settled for \$250.00 or in which we were excused. We are accused of defective work but the	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.

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	Commentator	Position	Comment	Committee Response
			plaintiffs do not have to even tell us what is wrong. We are assumed guilty with no way to prove our innocence. At least make the homeowners have to do the work of listing the defects.	
141	Rice, Stephanie Attorney Spinelli Donald Nott Sacramento	A	I practice construction litigation. There is a real need for form interrogatories applicable to construction defect cases. Please adopt the proposed construction form interrogatories!	The committee appreciates the input.
142	Risso, Sarah San Diego	A	No specific comment.	The committee appreciates the input.
143	Rivera & Associates By: Jesse M. Rivera, Partner Sacramento	A	No specific comment.	The committee appreciates the input.
144	Robie & Matthai APC By: Eric Holmberg Los Angeles	A	No specific comment.	The committee appreciates the input.
145	Salveson, Mar Beaumont	A	No specific comment.	The committee appreciates the input.
146	Sanders, Brian M. Partner Ericksen Arbuthnot Oakland	A	No specific comment.	The committee appreciates the input.
147	Santa Clarita Valley Builders DBA Main Frame Construction By: Mike Spigno, President Valencia	A	I agree that there should be changes made in the way these lawsuits are formed and litigated. As a Subcontractor it is disturbing, the high percentage of projects that are bringing lawsuits and we are not given the ability or the facts (in a comprehensive language) to correct the problem or enable us to defend ourselves against the greed brought on by lawyers and underwater homeowners that create these lawsuits just for the money (not to correct defect) and drag all the Subs along because they are guilty on	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.

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	Commentator	Position	Comment	Committee Response
			working on the site. It's simple....the industry and is being abused. Let's get back to what is reasonable and fair in construction defect cases.	
148	Santa Monica City Attorney's Office By: Jeanette Schachtner Santa Monica	A	No specific comment.	The committee appreciates the input.
149	Santoro, Nick Pasadena	A	No specific comment.	The committee appreciates the input.
150	Sargent, Michael Attorney Riverside	A	No specific comment.	The committee appreciates the input.
151	Schaldach, Dan Escondido	A	No specific comment.	The committee appreciates the input.
152	Schram, Stephen San Francisco	A	No specific comment.	The committee appreciates the input.
153	Shaw, John W. Partner Morris Polich & Purdy LLC Los Angeles	A	No specific comment.	The committee appreciates the input.
154	Shem, Mark San Jose	A	The Form Interrogatories for construction cases will help narrow the issues and avoid the usual garbage objections one sees in these types of cases.	The committee appreciates the input.
155	Sierra Lumber and Fence Co. By: Jim Moblad, General Manager Owner San Jose	A	No specific comment.	The committee appreciates the input.
156	Sierra Stair Works, Inc. By: Elden Lewis, President Loomis	A	It is only fair that trade contractors and their attorneys can obtain detailed and specific evidence of alleged defects along with other vital information from individual home owners (and ABOUT INDIVIDUAL HOMES) in a	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help

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	Commentator	Position	Comment	Committee Response
			verified and admissible form. These interrogatories will reinstate basic due process rights for trades to receive evidence supporting the plaintiffs' claims.	with discovery in this area.
157	Simkin, Mike Attorney Los Angeles	A	No specific comment.	The committee appreciates the input.
158	Skane Wilcox LLP By: Elizabeth Skane, Owner San Diego	A	The committee did a wonderful job in drafting these forms. I think they are a great idea for the purposes for which they are drafted, particularly in cases that involve a small number of homes. I see the number is limited to five. I suggest that they can be used in groups of homes up to 10 homes. However, I have a couple questions. The first is that included in this draft is a definition of Health Care provider. As the committee chose not to address bodily injury claims in these forms, is there a need for a definition of a health care provider? I could see no need. The second is that one issue that I believe we are seeing more and more commonly is the use of burning limits policies, i.e. those policies whose aggregate limits are eroded by both defense dollars and indemnity dollars.	The committee notes the commentator's agreement with the proposed form. The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court finds good cause for the asking party to do so. Definition of Health Care provider was included inadvertently and has been removed from the proposed form interrogatories. The form has been modified in light of this comment. See interrogatory 304.1(i).

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			There are several insurers that are now writing wrap insurance for even single family custom homes that contain burning limits policies, and certainly for design engineers, which are generally insured with PL policies, those policies are often burning limits policies as well. It seems that the form rogs should also have a question that forces those parties to identify whether or not their insurance policies are burning limits policies. If Plaintiffs know earlier that the policies are burning limits they can make policy demands sooner thereby protecting themselves and putting pressure on the insureds and their defense counsel earlier, because it sets those parties up to have their policies opened up. It also assists counsel and clients on the defense side because Plaintiffs may have an incentive to settle earlier as Plaintiffs recognize that the more they litigate the case, the less money is available to resolve the matter. I am not sure that the manner these questions are drafted require the disclosure of whether or not the policy is burning limits.	
159	Slaughter & Reagan, LLP By: Jim Cole Ventura	A	This is long overdue.	The committee appreciates the input.
160	Smith, Audrey Attorney Howie & Smith San Mateo	A	No specific comment.	The committee appreciates the input.
161	Starke Structures, Inc. By: Tom Starke, Owner Petaluma	A	No specific comment.	The committee appreciates the input.
162	Stephan, George Shareholder	A	No specific comment.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
	Buchalter Nemer Los Angeles			
163	Sterling Plumbing, Inc. By: David Cozatt, VP of Sales Santa Ana	A	I support the proposed changes!	The committee appreciates the input.
164	Stilson, Guy Attorney San Francisco	A	No specific comment.	The committee appreciates the input.
165	Struck, Jeane Attorney Severson & Werson San Francisco	A	No specific comment.	The committee appreciates the input.
166	Superior Court of San Diego County By: Mike Roddy, Executive Officer	A	No additional comments.	The committee appreciates the input.
167	Taylor Trim & Supply, Inc. By: Timothy P. Taylor, CEO Escondido	A	The insanity has to stop. If there are actual defects in the homes, we want to know about it and repair them. SB800 should not be a speed bump to construction defect litigation. If there are not specific defects listed by a homeowner who has experienced the defect or defects, then a group of lawyers come through with a blanket shotgun list of alleged defects that requires teams of attorneys to sort through. Contractors and tradesmen spend millions just to be released from the majority of the alleged claims. All the while, the homeowner just wants their home fixed, unless they have been persuaded to join the case on a promise of a big payout.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
168	The Costa Law Firm By: Daniel Costa, Attorney Gold River	A	No specific comment.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
169	The Law Office of Michael Whitaker By: Michael Whitaker, Partner Carmel	A	No specific comment.	The committee appreciates the input.
170	Tingley, Leslie Corona	A	My name is Les Tingley. I am the owner of L T Air Corporation. I strongly support the new form interrogatories for construction litigation #SPR-12-14. The cost and time involved in these cases cost us untold dollars and time. Insurance and court cost are out of sight. Why should subcontractors be held responsible when maintenance by the homeowner is not performed? Why should all subcontractors on the job site be responsible for defects that are not theirs? We need help or we will all go out of business.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help with discovery in this area.
171	Tobkin, Jennifer Attorney Details Fine et al Los Angeles	A	Members of the ASCDC worked long and hard on these Form Interrogatories; they are specifically designed for construction cases, as opposed to the standard Form Interrogatories currently used.	The committee notes the agreement with the proposal and appreciates the efforts involved. .
172	Toschi, Steven Oakland	A	No specific comment.	The committee appreciates the input.
173	Traver, Joshua Cole Pedroza LLP Pasadena	A	No specific comment.	The committee appreciates the input.
174	Trilogy Plumbing Inc. By: Tom Pride, Vice President Anaheim	A	No specific comment.	The committee appreciates the input.
175	Trimco Finish Inc. By: Mark Louvier, President Santa Ana	A	This is an important change to the current law. I am fully in support of the change. We need changes like this to get the construction companies to become profitable again.	The committee notes the commentator's agreement with the proposal, but further notes that the proposal is intended only to provide a standardized set of form interrogatories to help

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	Commentator	Position	Comment	Committee Response
				with discovery in this area.
176	TWR Enterprises, Inc. By: Amy Strommer, VP Risk Management Corona	A	No specific comment.	The committee appreciates the input.
177	Van, Ron Senior Associate Chapman, Glucksman, Dean, Roeb & Barger Los Angeles	A	No specific comment.	The committee appreciates the input.
178	Vasin, Michael Sullivan, Ballog & Williams, LLP Santa Ana	A	No specific comment.	The committee appreciates the input.
179	Vreize, John M. Eureka	A	Long needed for Construction Defect Litigation. Please adopt.	The committee appreciates the input.
180	Ward, James K. Partner Evans, Wieckowski and Ward Sacramento	A	No specific comment.	The committee appreciates the input.
181	Weinman, David Los Angeles	A	No specific comment.	The committee appreciates the input.
182	Weiss, Andrew Shareholder Weiss, Martin, Salinas & Hearst Fresno	A	No specific comment.	The committee appreciates the input.
183	Wm. M. Perkins By: Paul Frankel, President San Diego	A	this is an EXCELLENT piece of legislation that should become law as soon as possible.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
184	Wood, Ted Attorney Rancho Cordova	A	<p>*¹I am a 14-year attorney in Sacramento, California, with an extensive practice in construction defect litigation. The proposed interrogatories are the proverbial “site for sore eyes.” Unfortunately, the limitation that they be used on cases of five houses or less renders them absolutely useless. Construction defect cases are rarely filed in cases involving less than five houses. Those smaller cases typically do not have the traditional “Special Master” appointed and all discovery stayed; therefore, these form interrogatories are superfluous to the information already available to the parties in those smaller cases.</p> <p>Where form interrogatories are most desperately needed are in the larger cases where counsel for Plaintiffs and developers meet ex parte and select a “Special Master” and secure his appointment with the Court before the subcontractor cross-defendants have the opportunity to participate (1) in the selection of the “Special Master,” and (2) in the drafting of the Pre-trial Order or Case Management Order (“PTO/CMO”).</p> <p>The Invitation to Comment lists several “bullet points” under the Request for Specific Comments section. I will respond to those points in turn.</p> <p>1-2. Does the Proposal appropriately address the stated purpose? Would the proposed form interrogatories be appropriate and helpful in construction litigation as limited in the instructions?</p>	<p>The committee notes the commentator’s agreement with the proposed form. The committee appreciates the comment on the limitation on the use of the form interrogatories, but has concluded that, at least for the present, the form interrogatories should, in residential construction cases, be limited to use in cases with five or fewer residential units, in order to avoid potential abuse or burden. They may also be used in commercial property construction cases, and may be used in cases deemed complex if the court finds good cause for the asking party to do so.</p>

¹ Names of parties and assertions regarding specific cases have been redacted from this comment.

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			<p>No. The fatal flaw in these interrogatories is their stated restriction on use in cases involving six or more houses. Of the 70 files currently on my caseload, only two cases involve less than six residences. One is a school facility and one is a personal injury case arising out of a single house. The remaining 68 cases have house-counts ranging from 11-134, with 28 being the average.</p> <p>The typical PTO/CMO obtained by plaintiffs and developers stays all discovery, grants the “Special Master” (a non-statutory creature created by the parties who routinely fails to adhere to the Standards for Judicial Performance or the Rules of Court, but that is the subject of an entirely different discussion) broad judicial powers over the case, and power to conduct settlement conferences, blurring the lines between mediation and a statutory mandatory settlement conference. In addition, the PTO/CMO denies the subcontractor cross-defendants’ due process rights to obtain relevant, admissible evidence necessary to support dispositive motions and otherwise defend themselves in these cases.</p> <p><i>*[Commentator attached two PTO/CMOs issued in construction cases, which imposed a blanket stay on discovery from plaintiffs, but required certain defendants and cross-defendants to respond to interrogatories and document demands. Commentator also described actions taken in those cases, which description has been redacted.]</i></p> <p>3. Should the instructions allow the form interrogatories for use in somewhat larger residential constructions cases</p>	<p>The committee disagrees; it has concluded that the interrogatories will be helpful in smaller cases, even if this commentator does not litigate many such cases.</p> <p>The use of special masters and discovery referees in complex cases is beyond the scope of this proposal. The committee notes, however, that the form interrogatories will be available to be propounded in such cases upon a showing of good cause to the court.</p> <p>Comments concerning action taken by special masters in the two cases have been redacted, as the committee has no way to verify their accuracy and the names and specific case information are not pertinent to the committee’s recommendation or the council’s decision.</p>

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			<p>as well?</p> <p>There should be no limit on the use of the Form Interrogatories in Construction Defect Cases. For any case deemed “complex” by the Courts, the use of these Form Interrogatories would serve to provide ALL of the parties with the information necessary to work the case, whether to settlement or trial.</p> <p>Moreover, specious claims can be properly disposed of early through dispositive motions using the admissible evidence obtained through these Form Interrogatories. This becomes increasingly important in cases subject to the functionality standards and statutes of limitation under SB800 (Civil Code §§896, et seq. For example, Plaintiffs in these cases often claim in their defect lists, which are absolutely protected from disclosure under the PTO/CMOs, that their electrical outlets are not operating properly. An electrical subcontractor/cross-defendant has the absolute defense that the claim is untimely if not brought within four years from the close of escrow under Civil Code §896(f). However, with the blanket stay on discovery and the inability of the subcontractor/cross-defendant to obtain admissible evidence of the Plaintiffs’ claims (a plaintiff can certainly provide a lay opinion regarding their defects/problems by stating that an outlet or switch does not work, or their fence is falling, or the paint is peeling on the exterior wood trim, etc. – no expert opinion is necessary for those observations), that party is denied their due process rights to obtain the evidence necessary to defend themselves. The prohibition on the use of these interrogatories on larger cases only</p>	

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			<p>perpetuates the institutional “extortion by due process” that is the construction defect field.</p> <p>Plaintiffs’ firms have resisted having to respond to any sworn discovery responses because having to secure verified responses from 20, 30, 70 homeowners or more will impact their business model on these cases. Unfortunately, that is not a proper basis to limit a subcontractor/cross-defendant’s rights to obtain legitimate, verified discovery to basic questions about the Plaintiffs’ claims. Indeed, Plaintiffs’ firms have had problems with a lack of communication in past cases. [<i>Information regarding specific cases has been redacted.</i>] To further reduce the need for individual client communication and reduce transaction costs associated with these cases, Plaintiffs’ firms have resorted to extracting from their clients absolute power to sign all necessary settlement and release documents on their clients’ behalf. [<i>Information regarding specific case has been redacted.</i>]</p> <p>Certainly Milstein and other Plaintiffs’ firms oppose the Form Interrogatories being used in cases of any greater number because of the increase to them in their transaction costs. They have enjoyed many years of ramming this process down the throats of the subcontractor cross-defendants through the use of their pre-appointed “Special Masters” who are loathe to issue rulings contrary to the will of the Plaintiffs’ firm for fear of not being selected for the next case.</p> <p>The Judicial Council should be lauded for getting standardized questions out that can be and should be</p>	

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			attached to every PTO/CMO in a construction defect case, irrespective of the number of houses. Upsetting Plaintiffs' business model is not a reason for the continued denial of the cross-defendants' due process rights to defend themselves in these cases. Please remove the "house-count" limitation from these Interrogatories	
185	Yesowtich, Irene Partner Meckler Bulger Tilson Marick & Pearson San Francisco	A	No specific comment.	The committee appreciates the input.
186	Zumstein, Matt Attorney Redwood City	A	No specific comment.	The committee appreciates the input.

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	Commentator	Position	Comment	Committee Response
1.	A1 Door and Building Services By Jeffery S. Wilson, CEO Sacramento	A	I am in support of this legislation, and strongly support the positions outlined in the CALPASC letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
2.	Alley, Shaun Sacramento	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
3.	Alliant Insurance Services, inc. By Brian D. Bean, First Vice President San Bernardino	A	We agree with the proposed interrogatories, and support the positions outlined in the CALPASC letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
4.	Ancient Art, Inc. By Gregory Colgate and Alan Rea San Diego	A	I strongly support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
5.	Associated Tile Contractors of Northern California, Inc. By Jay Fischer, Secretary/Treasurer Sacramento	A	I and ALL the members of our association support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
6.	B Z Plumbing Co., Inc. By Mark Nicodemus, General Manager Lincoln	A	We support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
7.	Benchmark Landscape, Inc. By John Mohns, President Poway	A	I support the position outlined in the CalPASC letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
8.	Benchmark Landscape, Inc. By Dyan Lorenzen, Contracts Administrator Poway	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
9.	Brakke-Schafnitz Insurance Brokers Inc.	A	We support the position outlined in the CALPASC letter of May 30, 2012. We support the application of these	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
	By Keri Vogt, Account Manager Laguna Niguel		interrogatories in all construction defect litigation.	
10.	Burns, Jordan President Lancaster Burns Construction Inc.	A	I Jordan Burns, President of Lancaster Burns Construction, Inc. agree with the proposed interrogatories and give my support to the positions outlined in the attached CALPASC letter dated May 30th, 2012.	See response to CalPASC comment on Comment Chart A.
11.	Cal Coast Construction Spec. Inc. By Mike Christianson, VP Camarillo	A	Agree with Cal PASC Letter of May 2012.	See response to CalPASC comment on Comment Chart A.
12.	Can-Am Plumbing Inc. By Ron Capilla, President Pleasanton	A	I would like to support the position of CALPASC in their letter to you dated May 30, 2012. As a licensed contractor in the state of California, what they are proposing would be very helpful for our company.	See response to CalPASC comment on Comment Chart A.
13.	Capital City Drywall, Inc. By Andrew D. Sellers, VP of Operations North Highlands	A	I support the position outlined in the CALPASC letter of May 30, 2012. As a Drywall subcontractor that has been in business for 12 years I have a file cabinet full of cross complaints filed by builders that are being sued because of construction defect claims that never the result of drywall defects. They are cause by predatory Attorneys. A single nail pop or crack in a 10 year old corner bead that has be hit by a baby stroller 100 times over should not result in tens of thousands of dollars in attorney fees and insurance deductibles. Subcontractors are being made disposable after 10 years because of these suits. Most just shut down and close the doors. Please do something about this.	See response to CalPASC comment on Comment Chart A.
14.	CDA Insurance Services By Adam W. Gabler, Executive Vice President San Dimas	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
15.	Chandler, Ernie Santa Ana	A	I fully support the position as outlined in the CAL:PASC letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
16.	Delta Framing By James Kruse, Director Santa Ana	A	Somehow here in California, we need to stop these Construction Defect Claims that have been lining the pockets of the litigators, and costing our Ins. companies, and private business owners, Millions. As I personally have visited the homes with said claims, I find the homes, generally in great condition, with Standard defects, that are usually caused by Lack of maintenance. All of that said, I support the position outlined in the CALPASC letter, dated- May 30, 2012 Let's slow down this Cash Cow for Law Firms.	See response to CalPASC comment on Comment Chart A.
17.	Design Fabrication, Inc. By John Forst, President San Marcos	A	I support the position outlined in the CALPASC letter of May 30, 2012. As all small subcontractor doing typically optional countertops that typically come with a ten year warranty from the manufacturer. We are barraged with lawsuits that ultimately have nothing to do with our products or workmanship and many times we did not even do any work in the homes.	See response to CalPASC comment on Comment Chart A.
18.	Diversified Roofing Services, Inc. By Mimi Jones, Assistant to Management Palm Desert	A	I strongly agree with the letter submitted by CALPASC dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
19.	Duncan, Paul Riverside	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
20.	Dynamic Plumbing Holding Company, Inc. By Michael Mahony, Vice President Riverside	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
21.	Fiber Car Baths Inc.	A	I support the position outlined in the CALPASC letter of	See response to CalPASC comment on Comment

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	Commentator	Position	Comment	Committee Response
	By Tom Kirkmeyer, President Danny Torres, Plant Manager Jerad Gilreath, Field Services Manager, Rogelio Lead, Mold Shop Manager Adelanto		May 30, 2012.	Chart A.
22.	Fishcer Tile and Marble By Jay Fischer, President Sacramento	A	I totally support the positions in the CALPASC letter dated 5-30-12. Please restore some sanity to theis system of legalized extortion....thanks	See response to CalPASC comment on Comment Chart A.
23.	Foshay Electric Co., Inc. By Janet Hogstrom San Diego	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
24.	Four Corners Concrete, Inc. By David Brooks, President Escondido	A	I support the position detailed in CALPASC's letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
25.	Frontier Concrete Inc. By Mike Williams, owner Vista	A	I support the position outlined in the CALPASC letter dated may 30, 2012.	See response to CalPASC comment on Comment Chart A.
26.	Gackenbach, Roger President California Plastering Sun Valley	A	To Whom It May Concern: We agree with the positions outlined in the May 30, 2012 Letter from CALPASC, Please reply if you need additional information or have any questions.	See response to CalPASC comment on Comment Chart A.
27.	Gateway Concrete Inc. By David Epperson, Owner Riverside	A	I support the position outlined in the CALPASC letter of May 30, 2012. Further, I cannot tell you how unfair I think the system currently is. I am new to the field of subcontracting, and it truly disappoints me to know that there is a system of legalized extortion going on and no one seems to care about stopping it. Certainly the plaintiff's lawyers don't	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
			want it to stop. And neither does the CD defense industry and all the \$450/ hour expert witnesses. I was absolutely dumfounded to learn that we were being sued for homes with neither any defects nor a list of supposed defects. I am no lawyer, but there is something inherently wrong in that.	
28.	H&D Electric, Inc. By Mark Cooper, President Sacramento	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
29.	Hardwood Creations dba HCI By Thomas R. Steele, President Brea	A	As a contractor in California for the past 30 years, I strongly support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
30.	Hoefl, Bey Sacramento	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
31.	Homestead Sheet Metal By George Tomlanovich, President Spring Valley	A	I George Tomlanovich, President of Homestead Sheet Metal agree with the proposed interrogatories and give my support to the positions outlined in the CALPASC letter dated May 30th, 2012	See response to CalPASC comment on Comment Chart A.
32.	Innovative Drywall Systems Inc. By Jason Bellamy, Project Manager Escondido	A	I want to submit that I agree and support the CALPASC letter of May 30, 2012 and agree with proposed changes.	See response to CalPASC comment on Comment Chart A.
33.	iStairs, Inc. By Bryan Worrall Rancho Cordova	A	I strongly support the position outlined in the CALPASC letter of May 30, 2012 of New Form Interrogatories for Construction Litigation.	See response to CalPASC comment on Comment Chart A.
34.	JDM Construction Co., Inc. By John VanDerstyne, President Lathrop	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
35.	Jezowski and Markel Contractors By Mike Barth, President	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
	Orange			
36.	Joseph Holt Plastering, Inc. By Scott McKernan, President Corona	A	I support the position stated in the CalPASC letter dated 5-31-12	See response to CalPASC comment on Comment Chart A.
37.	Kathawa, Mary, Lath, Prowall and Plaster Escondido	A	I strongly agree and support the position outlined in Bruce Wick's letter from CALPASC dated May 30, 2012. I am supporting this on behalf of Calpasc AND on behalf of the health of my company. Thank you!	See response to CalPASC comment on Comment Chart A.
38.	Keefe, David Anaheim	A	We employ 70 California families as a plumbing contractor and unsupported construction defect law suits lessen our ability to keep those families employed.	See response to CalPASC comment on Comment Chart A.
39.	Kenyon Construction, Inc. By Brian Chien, General Counsel Richmond	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
40.	L&S Construction Inc. By William Larkin, President	A	I strongly support the CALPASC letter of May 30, 2012 concerning the proposed interrogatories and their positions on construction defects.	See response to CalPASC comment on Comment Chart A.
41.	Larrabure Framing By Brian Larrabure, President Chatsworth	A	*[Mr. Larrabure provided a full copy of the CALPASC comment.]	See response to CalPASC comment on Comment Chart A.
42.	Magik Enterprises, Inc. By Tim Hicks, President Palm Springs	A	I support the position outlined in the CALPASC letter dated May 30, 2012. These changes are important and will protect the rights of both the homeowners and the honest, hardworking business owner by disclosing the alleged defects early in the process. It will allow the responsible parties to address the issues or be removed from the case when there is no direct involvement and the plaintiffs are simply trying to get a larger pool of peripheral subcontractor's insurance companies to defend. We deserve to know the specific claims early in the action.	See response to CalPASC comment on Comment Chart A.
43.	Marne Construction	A	I support the position outlined in the CALPASC letter of	See response to CalPASC comment on Comment

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	Commentator	Position	Comment	Committee Response
	By Charles Randolph, President Orange		May 30, 2012.	Chart A.
44.	McCarthy & McCarthy LLP By Kevin McCarthy, Managing Partner Oakland	A	I agree with the proposed changes as outlined in the CALPASC letter of may 30, 2012	See response to CalPASC comment on Comment Chart A.
45.	Mercier, Rick E. President Circle M Contractors, Inc. San Clemente	A	I fully support the proposed interrogatories and support the positions outlined in the CALPASC letter dated May 30, 2012. I represent a company that employs 200 to 400 carpenters; this will greatly help our ability to reduce costly and unnecessary litigation expenses. It is especially burdensome in this tough economic climate.	See response to CalPASC comment on Comment Chart A.
46.	Nancy Smith Construction, Inc. By Randall Smith, Vice President Oakland	A	We support the positions outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
47.	New Way Landscape and Tree Services By Randy Newhard, CEO San Diego	A	I support the position outlined in the CALPASC letter of May 30, 2012. thank you	See response to CalPASC comment on Comment Chart A.
48.	Pacific Green Landscape Inc. By Michael Regan, President Lakeside	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
49.	Pacific M Painting, Inc. By Jeff Mullin, Account Executive	A	I support the position outlined in the CALPASC letter of May 30, 2012. Thank you.	See response to CalPASC comment on Comment Chart A.
50.	Pinnacle Plumbing, Inc. By Keith Strong Clovis	A	I strongly support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
51.	Richard Hancock, Inc.	A	I support the position outlined in the CALPASC letter of	See response to CalPASC comment on Comment

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	Commentator	Position	Comment	Committee Response
	By Bruce Lamar, President Sonoma		May 30, 2012.	Chart A.
52.	Richards Plumbing, Inc. By Terry Fletcher, President Fresno	A	I am in support of CALPASC efforts regarding the Form interrogatories involved in construction defect cases.	See response to CalPASC comment on Comment Chart A.
53.	Saber Plumbing, Inc. By John Zlomek, CEO Escondido	A	Saber Plumbing, Inc supports the position as outlined in CALPASC letter of May 30, 2012. We are a 50 year plumbing tradecontractor and require that construction defects helps to protect us when we are not in fault, instead of it just getting passed on to us. Saber Plumbing, Inc. Strongly agrees with prposed changes.	See response to CalPASC comment on Comment Chart A.
54.	Sheehan Construction, Inc. By Victor A. Franco, Controller Napa	A	We support the position outlined in the CALPASC letter dated May 30, 2012. Construction Defect Litigation in California is shameful activity. The conduct of Plaintiffs' attorneys, Homeowners, and all Legislators advancing their agenda should be censured, and hopefully, someday, made illegal... like banning DDT. How do these people look at themselves in the mirror every morning?	See response to CalPASC comment on Comment Chart A.
55.	Sherman-Loehr Custom Title Works, Inc. By James P. Loehr, President Sacramento	A	I definitely support the position outlined in the 5/30/12 CALPASC letter.	See response to CalPASC comment on Comment Chart A.
56.	Sierra WES Wall Systems, Inc. By Eric Stilwell, CFO Loomis	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
57.	Silverwood Landscape By Steven Lancaster, President Costa Mesa	A	I agree with the letter submitted by CALPASC dated 5-30-2012	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
58.	Simas Floor Company By Megan Hui Sacramento	A	We support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
59.	Sonoran Roofing, Inc. By John Daly Rocklin	A	I agree with the position outlined in the letter from CALPASC dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
60.	Stein, Jacqueline Partner,FMG San Diego	A	Agree with the position set forth in CALPASC letter of May 30	See response to CalPASC comment on Comment Chart A.
61.	Terry Tuell Concrete, Inc. By Jonathan Tuell, Manager Fresno	A	I highly support the position outlined in the CALPASC letter dated May 30, 2012.	See response to CalPASC comment on Comment Chart A.
62.	The Michael Ehrenfeld Company By Marc Kaplan San Diego	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
63.	Three D Electric Co. By David Whitt, President/CEO Benicia	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
64.	Urban Concrete, Inc. By John W. Dewey, President Lake Elsinore	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
65.	Veldkamp, Esq., Arnold General Counsel Superior Ready Mix Concrete L.P. Escondido	A	We support the position outlined in the CALPASC letter of May 30, 2012.	
66.	Viloria Construction, Inc. By Benny Viloria, President Foothill Ranch	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
67.	West Coast Drywall, Inc. By Myrna Lawson, Office	A	I support the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.

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	Commentator	Position	Comment	Committee Response
	Manager Norco			
68.	Western HomeBuilders, Inc. By Steve Enochs, Owner Silverado	A	I support the position outlined in the CALPASC letter of May 30, 2012	See response to CalPASC comment on Comment Chart A.
69.	Wilson, Trevais Estimator Spring Valley	A	I support CALPASC position proposed in the May 30 2112 outline	See response to CalPASC comment on Comment Chart A.
70.	X-Act Finish & Trim, Inc. By Kenneth Paul Tavoda Corona	A	Act Finish & Trim, Inc. supports the position outlined in the CALPASC letter of May 30, 2012.	See response to CalPASC comment on Comment Chart A.
71.	Zachman, Scott President, EZ Electric Roseville	A	I strongly support the position outlined in the CALPASC letter of May 30, 2012. Bogus Construction Defect claims threat my business and the jobs/lives of my employees as the cost associated with defending our position is quite costly.	See response to CalPASC comment on Comment Chart A.