

FEBRUARY 4, 2022

TAKING AN EXPERT
DEPOSITION AND
DEFENDING AN EXPERT
DEPOSITION

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Attachment 4.2

DEFENDING AN EXPERT DEPOSITION

1. Preparation: Same as preparing your client EXCEPT there is no attorney/client relationship and no attorney/client privilege — Just state your opinions and the bases of those opinions; answer questions asked.
2. Consultant vs. expert: Attorney/client privilege
3. Expert's notes are discoverable
4. Implications of no attorney/client relationship and no attorney/client privilege during preparation
 - (a) Preparation discussions and expert's notes are discoverable
 - (b) Expert should take few notes
 - (c) No reports — But see Federal Rule 26(a)(2) — Expert report required setting forth opinions and conclusions.
5. Fee is same whether at trial, in deposition, or back in the office
6. Implication of no attorney/client relationship and no attorney/client privilege during deposition
 - (a) Can't instruct not to answer -- suggestions
 - (b) Conferences are discoverable
7. Work to do and opinions to render after deposition and before trial
 - (a) Keep door open
 - (b) Rebuttal of other side's expert
 - (c) Whatever lawyer instructs

TAKING EXPERT WITNESS DEPOSITIONS

An expert is a person who testifies on a subject that is sufficiently beyond common experience that his opinion would assist the trier of fact.

The main purpose of a deposition of an expert is to ascertain each of his/her opinions and the basis for each opinion. We want to find out everything the expert knows about the case and everything about his/her thinking. The more he/she talks, the better our chance to discredit him/her at trial.

Unlike the deposition of a non-expert, the goal is not to impeach, discredit or trick the expert. Skipping around, a technique that is invaluable in deposing a hostile non-expert witness, should not be used when asking about opinion and bases of opinion. Don't ask questions which demonstrate the expert's opinion is wrong. This will only help the expert to change his opinion at trial.

The focus should be on the following:

1. Qualifications of the expert or lack thereof.
2. Lack of precise experience.
3. Potential sources of bias.
 - (a) Relationship with other side
 - (b) Relationship with other side's counsel
 - (c) Fees less because of frequency of hiring
 - (d) Testifies for plaintiff or defendant
4. The time the expert spent preparing his opinions and conclusions.
5. The expert's fee arrangement.
 - (a) Higher fee when testifying
6. Every opinion that the expert will offer at trial. This includes every assumption the expert made in coming to his conclusions and the bases for each conclusion.
7. Notes and reports
8. Discussions with counsel and other party
9. Close the door on further testimony

No privilege exists between the expert and counsel for the parties. Thus, you are entitled to ask about all communications, oral or written, between the expert and counsel.

Start deposition the same — swear the witness < preamble and production of documents
(Attachment 4.2)

OUTLINE FOR DEPOSITION OF EXPERT WITNESS (APPRAISER)

I. BACKGROUND **Nos. 1 and 2 on page 58**

A. Education

Begin with high school; include correspondence courses, seminars and non-degree program course work.

B. Employment history

1. Military experience
2. Any employment that has provided training or assistance for your assignment

C. Membership in professional societies/organizations

D. Teaching/lecturing experience

E. Written any articles or other materials

F. Drafted any legislation or appeared before legislative bodies

G. Bought or sold commercial property

II. PRIOR EXPERIENCE AS AN EXPERT **Nos. 1, 2, and 3**

A. How long testifying in litigation

B. Number of cases in which you:

1. were contacted as a consultant
2. were deposed
3. testified at trial
4. qualified as an expert

C. Percentage of the foregoing for plaintiff and for defendant

D. Name of a case within last 24 months

E. Number of prior cases involving the same issues, and names of those cases

- F. Number of prior cases (either consultant, deponent or trial) have been **No. 3**
 - 1. on behalf of counsel representing party
 - 2. or any member or former member
 - 3. on behalf of the party
- G. Relationship between expert and opposing counsel/party

III. HOW MUCH TIME HAS BEEN SPENT **Nos. 4 and 5**

- A. Number of hours
- B. Financial arrangement
 - 1. Reading deposition transcript
 - 2. Discussing the case -- with whom (counsel)
- C. Is there a different billing rate for time spent **No. 6**
 - 1. consulting
 - 2. depositions
 - 3. trial
- D. Have you worked with or used an assistant **Nos. 4 and 6**
 - 1. Who
 - 2. How many hours

IV. ASSIGNMENT IN THIS CASE [Discussion with counsel] **No. 8**

- A. When were you first contacted
- B. How -- letter, telephone call, personal contact
- C. Nature of the assignment
- D. Notes relating to assignment

V. FILES AND REPORTS

- A. Written reports -- will such a report be produced in the future **No. 7**

1. Deliver copy to me, if produced
- B. Have you received any information from counsel re preparation of report **No. 5**

VI. OPINIONS **No. 6**

- A. What opinion have you reached
 1. "Tell us each opinion you have reached as a result of your work in this case."
 2. Are there any other opinions

VII. BASIS OF EACH OPINION (Assumptions) **No. 6**

- A. As to each opinion, state all facts or information upon which the opinion is based
- B. Is there anything else upon which your opinion is based
- C. Bases
 1. Photographs, records and testimony
 2. All assumptions, conjecture or reasoning
 3. Books, articles
- D. Is there any article or text encountered not fully consistent with opinion **No. 1**
- E. As to each opinion state all assumptions upon which the opinion is based

VIII. NO ADDITIONAL CONTEMPLATED WORK **No. 9**

- A. Set forth all opinions. Nothing else if answer no.
- B. Anything further you will do
- C. What is it

EXHIBIT 4.2

1 THE LAW FIRM
2400 Avenue of the Stars
2 Los Angeles, California 90067-4590
Telephone: 310.000.0000/Fax: 310.000.0001

3 Attorneys for Plaintiff BUYER
4
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6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10

11 BUYER,
12 Plaintiff,
13
14 v.
15 SELLER,
16 Defendant.
17

Case No.

NOTICE OF DEPOSITION OF [EXPERT WITNESS], AND DEPOSITION SUBPOENA FOR PERSONAL APPEARANCE AND PRODUCTION OF DOCUMENTS AND THINGS

Date: March 10, 2021
Time: 10:00 a.m.
Place: 2400 Avenue of the Stars
Los Angeles, California 90067

Action Filed: January 25, 2012

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19
20 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

21
22 PLEASE TAKE NOTICE that, pursuant to Sections 2020.010, 2025.010 and 2034.010,
23 *et seq.*, of the California Code of Civil Procedure, Plaintiff Buyer (“Plaintiff”), by and through his
24 attorneys, will take the deposition of Expert Witness (the "Deponent"), identified by Defendant
25 Seller (“Defendant”) in Defendants’ Expert Witness Designation, on March 10, 2021, at 10:00
26 a.m. at the law offices of The Law Firm, 2400 Avenue of the Stars, Los Angeles, California
27 90067.
28

GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

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1 The deposition will be taken upon examination before an officer authorized to administer
2 oaths and will be recorded stenographically, with optional instant visual display (by "Live Note"
3 or other comparable software), and may be recorded by videotape and shall continue from day to
4 day until completed. Videotaped depositions are intended for possible use at trial pursuant to
5 California Code of Civil Procedure Section 2025.220(a)(5).
6

7 Pursuant to Code of Civil Procedure Section 2034.45, witness fees, if any, will be
8 tendered to the deponent at the time of deposition.

9 **PLEASE TAKE FURTHER NOTICE** that pursuant to Code of Civil Procedure Section
10 2025.220(a)(4), the Deponent is required to produce at the deposition for inspection and copying
11 the documents and things identified in Exhibit "A" attached hereto.
12

13 This notice is without prejudice to or waiver of Plaintiff's right to object and/or move to
14 strike and preclude trial testimony with respect to the foregoing purported expert witness and
15 defendant's expert designation.
16

17 DATED: February 24, 2021

THE LAW FIRM

19 By: _____
20 JOE LAWYER
Attorneys for Plaintiff Buyer
21
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27
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EXHIBIT 4.2

EXHIBIT A

I.

INSTRUCTIONS

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2
3
4 1. You are required to produce all documents requested that are within your
5 possession, custody or control, or in the possession, custody or control of your attorneys,
6 investigators, accountants, agents and/or other persons acting or purporting to act on your behalf,
7 including any predecessors or successors.

8 2. The documents shall be produced as they are kept in the ordinary course of
9 business or shall be organized and labeled to correspond to the Request to which they are
10 responsive. If the document is responsive to more than one Request, it shall be labeled so as to
11 indicate each Request to which it is responsive.

12 3. If you maintain that any responsive document is protected from disclosure by any
13 privilege, including the attorney-client privilege or the work-product doctrine, specify the nature
14 of the protection claimed, describe the precise ground for the protection, and identify the
15 document with particularity, including its author, dates, all recipients thereof, the subject matter,
16 and the number of pages therein.

17 4. In the event that any responsive document has been destroyed, lost, discarded, or
18 otherwise disposed of, any such document is to be identified as completely as possible, including,
19 without limitation, the following information:

- 20 a. The date of disposal;
21 b. The manner of disposal;
22 c. The reason for disposal;
23 d. The person authorizing disposal; and
24 e. The person disposing of the document.

25 5. These Requests shall be deemed continuing so as to require prompt, supplemental
26 production if the Deponent obtains or creates additional documents subsequent to the date hereof.

27 6. To the extent any responsive documents are maintained in electronic form on a
28 desktop computer, laptop computer or other computer system, the Deponent has an affirmative

EXHIBIT 4.2

1 duty to preserve, retain and produce for inspection all such documents, and not to destroy, lose,
2 purge or erase such documents, or to allow such documents to be destroyed, lost, purged or
3 erased. Failure to preserve, retain and produce all responsive documents and/or data may subject
4 the Deponent to criminal and civil penalties, including, but not limited to, evidentiary sanctions.

5 **II.**

6 **DEFINITIONS**

7 1. As used herein, the term "DOCUMENT" or "DOCUMENTS" means and includes
8 each and every medium upon which information is printed or can be printed, recorded or
9 reproduced by mechanical means, by hand or by any other method, whether by you or someone
10 else, including, but not limited to, all handwritten, typed, printed, microfilmed, and photostated
11 matter, copies of all kinds, regardless of origin, including the original and all non-identical
12 duplicates, copies and drafts of all documents and tangible things and includes all
13 correspondence, memoranda, handwritten notes, electronic mail, reports, statements, contracts,
14 agreements, proposals, letters, term sheets, red-lined versions, telegrams, messages (including
15 reports of telephone conversations and conferences), studies, analyses, exhibits, appendixes,
16 amendments, modifications, comparisons, demands, data, schedules, recordings, papers, data
17 sheets, publications, books, magazines, newspapers, booklets, circulars, brochures, bulletins,
18 notices, instructions, drafts, notebooks, diaries, sketches, diagrams, forms, manuals, lists, minutes
19 and other COMMUNICATIONS, including interoffice and intraoffice COMMUNICATIONS,
20 surveys, photographs, drawings, charts, maps, notes of meetings, conversations, records of
21 conversations, records, invoices, balance sheets, profit and loss statements, statements of
22 earnings, statements of operation, auditor reports, financial reports and summaries, tax returns,
23 statements or lists of assets, expense records, opinions, legal opinions, expert opinions, account
24 payable ledgers, account receivable ledgers, appraisals, any ancillary materials, whether executed
25 or unexecuted, and all graphic or manual records or representations of any type, including without
26 limitation, writings, recordings, drawings, graphs, charts, videotape recordings, magnetic tape
27 recordings, computer disks or other data compilation of any type from which information can be
28

**GREENBERG GLUSKER FIELDS CLAMAN
& MACHTINGER LLP**
1900 Avenue of the Stars, 21st Floor
Los Angeles, California 90067-4590

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1 obtained, including, if necessary, through translation or through detective devices into a
2 reasonably usable form.

3 2. The term “COMMUNICATION” or “COMMUNICATIONS” is used in the
4 broadest sense and includes, but is not limited to, any transmittal and/or receipt of information,
5 whether oral, written, or verbal or nonverbal, whether such was by chance, prearranged, formal or
6 informal, oral or written, and specifically includes conversations in person, telephone
7 conversations, electronic mail, telegrams, letters or memoranda, formal statements, press releases,
8 and newspaper articles.

9 3. The term “CONCERNING” is used in the broadest sense and shall mean, without
10 limitation, constitute, directly or indirectly refer to, support, contradict, contain information
11 regarding, pertain to, allude to, summarize, memorialize, mention, address, reflect, describe,
12 identify, embody, involve, evidence, comprise, discuss, show, demonstrate, state, comment on,
13 respond to, analyze, edify, deal with, or in any way pertinent to, or have some logical or factual
14 connection to the to subject matter of the type of DOCUMENTS sought.

15 4. The terms “PERSON” and “PERSONS” shall mean and refer to all individuals,
16 natural persons, entities, partnerships, corporations, business entities, joint venture, firms,
17 associations, organizations, enterprises, institutions, trusts, estates, government agencies, quasi-
18 government agencies, regulatory agencies, foundations, committees, attorneys, law firms, health
19 care providers, and all other legally recognized entities of any type, nature or description.

20 5. The terms “YOU” or “YOUR” as used herein means and refers to the Deponent
21 identified above, and any PERSON acting on his behalf, including but not limited to, agents,
22 employees, attorneys, consultants, accountants, investigators, partners and representatives.

23 6. The term “LAWSUIT” shall mean the action entitled *Buyer v. Seller*, Los Angeles
24 Superior Court Case No. BC000000.

25 7. The term “DEFENDANT” shall mean and refer to Defendant Seller and/or any of
26 his representatives, accountants, attorneys, agents, employees, partners, affiliates, or anyone
27 acting on their behalf.
28

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1 8. The term “and” or “or” shall be construed conjunctively or disjunctively as
2 necessary to make the request inclusive rather than exclusive.
3

III.

DOCUMENTS REQUESTED

4
5 1. ALL DOCUMENTS upon which YOU rely in support of any opinion YOU have
6 formed CONCERNING the LAWSUIT. **No. 6 on page 58**

7 2. ALL DOCUMENTS including but not limited to, reports, drafts and notes
8 AND/OR memoranda, prepared by YOU in connection with the LAWSUIT. **No. 7**

9 3. ALL DOCUMENTS which YOU have reviewed in connection with the
10 LAWSUIT. **No. 6**

11 4. ALL DOCUMENTS provided to YOU by DEFENDANT'S counsel or any other
12 person in connection with YOUR work as an expert witness in this lawsuit. **No. 8**

13 5. ALL DOCUMENTS YOU have provided to DEFENDANT'S counsel or any other
14 person in connection with YOUR work as an expert witness in this lawsuit. **Nos. 8**

15 6. ALL DOCUMENTS YOU have authored or contributed to, in whole or in part,
16 referring to the subject matter upon which YOU have been designated as an expert in this
17 LAWSUIT. **No. 6**

18 7. ALL DOCUMENTS CONCERNING any basis for any opinion which YOU have
19 formed in connection with this LAWSUIT. **Nos. 6 and 7**

20 8. ALL DOCUMENTS to which YOU intend to make reference at trial. **No. 6**

21 9. ALL DOCUMENTS constituting any and all opinions or drafts of opinions that
22 YOU have formulated in connection with YOUR work as an expert witness in this LAWSUIT.
23 **No. 6**

24 10. ALL DOCUMENTS constituting all reports YOU have created in YOUR capacity
25 as an expert witness in this LAWSUIT. **Nos. 6 and 7**

26 11. All correspondence or DOCUMENTS CONCERNING COMMUNICATIONS of
27 any type between YOU and DEFENDANT and/or YOU and counsel for DEFENDANT and/or
28

EXHIBIT 4.2

1 any other agent of DEFENDANT at any time. **No. 8**

2 12. All DOCUMENTS YOU have reviewed or considered which are inconsistent in
3 any way with YOUR opinion(s) in this LAWSUIT. **No. 6**

4 13. All DOCUMENTS YOU have reviewed or considered which YOU do not rely on
5 to support YOUR opinions in this lawsuit. **No. 6**

6 14. ALL DOCUMENTS including, but not limited to, invoices, billing statements,
7 and/or records CONCERNING YOUR time spent and fee arrangement in connection with this
8 LAWSUIT. **Nos. 4 and 5**

9 15. ALL DOCUMENTS CONCERNING or constituting any notes, draft reports,
10 reports and/or written opinions by YOU that were prepared in connection with YOUR providing
11 consultant or expert witness services for any PERSON in any matter within the past ten years.

12 **No. 3**

13 16. ALL DOCUMENTS CONCERNING or constituting any notes, draft reports,
14 reports and/or written opinions by YOU that were prepared in connection with YOUR providing
15 consultant or expert witness services for (1) any case that is or was handled by the firms of
16 Opposing Counsel or any of their attorneys or (2) any matter whatsoever involving
17 DEFENDANT. **No. 3**

18 17. All sworn testimony including but not limited to deposition or trial testimony by
19 YOU in connection with YOUR providing consultant or expert witness services for any PERSON
20 in any matter within the past ten years. **No. 3**

21 18. All billing statements or any records relating to payments YOU have received over
22 the past ten years in relation to retention of YOUR services in connection with: (a) any case that
23 is or was handled by the firms of Opposing Counsel, or any of their attorneys or (b) any matter
24 whatsoever involving DEFENDANT. **No. 3**

25 19. All DOCUMENTS constituting your curriculum vitae, resume and/or biographical
26 statements. **Nos. 1 and 2**