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**COMPELLING CALIFORNIA-BASED IN-PERSON DEPOSITION
TESTIMONY OF A FOREIGN RESIDENT THROUGH
PMQ/PMK PROCEDURES**

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Litigation attorneys can compel foreign residents to testify at depositions in California using Person Most Qualified/Person Most Knowledgeable (“PMQ/PMK”) procedures. These procedures enable a Plaintiff to compel a corporation attempting to avoid giving competent deposition testimony as to topics identified in the deposition notice. Corporations seeking to obstruct the discovery process may designate witnesses on the corporation’s behalf, who are intentionally deprived of relevant information, documentation, or unable to testify competently. Defendant corporations obstructing the discovery process is not new. However, what can be done if a corporation designates an individual who is not competent to testify competently as to discoverable matters? Is the plaintiff attorney trapped? Can a corporation testify that it cannot produce documents or give testimony? No. While the plaintiff will be forced to engage in additional motion-work, it is possible to compel a corporation to produce the person most qualified to testify.

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This article examines how a California litigator can use PMQ/PMK procedures to compel a defendant corporation to produce a witness capable of testifying in a deposition in California.

BACKGROUND

The following fact pattern—inspired by real cases—describes a situation where the key issue is whether Peter (“Plaintiff”) can reverse pierce the corporate veil through David (“Defendant”) to hold one of David’s majority-owned corporations liable for his breach of contract.

Piercing the corporate veil occurs when a Plaintiff seeks to disregard an entity’s limited liability status (e.g., the corporate form) to hold the shareholders, partners, or members liable for the entity’s liability.¹ In determining whether a Plaintiff can pierce the corporate veil, it is imperative to determine whether the shareholders failed to observe corporate formalities, commingled funds, or founded the company to commit a fraud.² Inversely, a Plaintiff reverse pierces the corporate veil when the Plaintiff attempts to hold an entity liable for a shareholder’s obligations.³

David and Peter reside in China. David owns controlling shares in XYZ Corp. (a California corporation). XYZ Corp. is a toy design company solely operating in California. Peter enters a contract with David, agreeing to loan David money. In return, David agrees to pay the full amount in six months and to a monthly interest charge until full payment is made.

Six months pass and David does not pay Peter. David and Peter agree to an extension and renewal agreement which includes additional interest charges. David informs Peter that David’s corporation, XYZ Corp., is developing a new line of toys in California.

David again fails to pay Peter at the end of the extension. Negotiations do not result in settlement. Peter files suit against David and XYZ Corp. in California. Peter alleges David and XYZ Corp. are

1. *See* *Minton v. Cavaney*, 56 Cal. 2d 576, 579 (1961); *see also* *Riddle v. Leuschner*, 51 Cal. 2d 574, 580 (1959).

2. *Id.*

3. *See* *Curci Investments, LLC v. Baldwin*, 14 Cal. App. 5th 214, 224 (2017).

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 325

alter egos;⁴ and therefore, the Court should reverse pierce the corporate veil to hold XYZ Corp. liable for David's contractual obligations.

XYZ Corp.'s capital is at issue in the fact pattern—with what funds or materials, when, and by whom. Peter served a PMQ/PMK deposition notice on XYZ Corp. to produce records and a witness who can testify as to these matters. XYZ Corp. designated its Corporate Secretary (a resident of California) as its PMQ/PMK. However, while the Corporate Secretary could testify as to some, he could not testify as to all noticed matters. On multiple occasions, the Corporate Secretary testified David is the *only* person knowledgeable about these topics.

Peter then served a motion to compel XYZ Corp. to produce another individual who can testify as to the noticed matters, more specifically, to produce the *actual* person most qualified. XYZ Corp. opposed the motion arguing that it designated its PMQ/PMK.

I. WHY IS THIS PROCEDURE NECESSARY?

Section 1989 of the California Code of Civil Procedure, generally restricts California courts from compelling in-person, in-state testimony of non-resident natural persons⁵ even if that person is a party to the case:⁶ “A witness . . . is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service.”⁷ Furthermore, in 2011, the Second District Court of Appeal held a trial court lacks the power to compel a foreign witness to attend a deposition in California.⁸

4. “Alter ego” is the doctrine in which the obligations of a corporation are being treated as those of its equitable owners, or the obligations of the equitable owners being treated as those of the corporation. *Minton*, 56 Cal. 2d at 579; *Riddle*, 51 Cal. 2d at 580; *Wenban Estate, Inc. v. Hewlett*, 193 Cal. 675, 696-97 (1924); *See also* 14 California Forms of Pleading and Practice § 161.10 (Matthew Bender).

5. Including officers and directors of a corporation. *See Twin Lock, Inc. v. Superior Court*, 52 Cal. 2d 754, 759 (1959).

6. “Unless the court orders otherwise under Section 2025.260, the deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence.” CAL. CIV. PROC. CODE § 2025.250(a) (Deering 2020).

7. CAL. CIV. PROC. CODE § 1989 (Deering 2020).

8. *Toyota Motor Corp. v. Super. Ct.*, 197 Cal. App. 4th 1107, 1110 (2011).

Therefore, under most circumstances, the deposition of a foreign witness must be conducted in the deponent's home country. However, while the Second District held depositions of *natural* persons cannot be compelled, the court did not address the issue of compelling a party deponent, such as a company representative pursuant to California Code of Civil Procedure Sections 2025.230 and 2025.250(b).⁹

Section 1989 and *Toyota Motor Corp. v. Superior Court* are inconvenient for a California litigator but not too burdensome. Pursuant to Section 2026.010 and 2027.010 of the California Code of Civil Procedure, if the deponent is a party to the action or is an officer, a director, a managing agent, or an employee of a party, service of a deposition notice is effective to compel him or her to attend and testify at a deposition taken outside of California. The deposition testimony, as well as any produced documents, electronically stored information, or tangible items, is useful in a California action.¹⁰ If the deposition is taken in another state, territory, or insular possession of the United States, the deposition notice must specify a place that is within 75 miles of the residence or a business office of the deponent.¹¹ However, there is no similar provision or requirement regarding the location of a deposition to be taken in a foreign nation.¹² Accordingly, a litigator seeking testimony of a resident of a foreign country must avail herself of the "Convention on the Taking of Evidence Abroad in Civil or Commercial Matters" or the Hague Evidence Convention ("the Hague"). The Hague is a multilateral treaty that proscribes how parties from different countries may seek and compel discovery from one another.¹³ The treaty is dense; for this article's purposes, it requires attorneys to take the deposition testimony of a foreign resident in their home country, usually by local counsel (i.e., the California litigator cannot ask the questions).¹⁴

9. *Id.* at 1125 n.20. A deposition of a non-natural person, e.g. a PMQ/PMK.

10. CAL. CIV. PROC. CODE §§ 2026.010(b), 2027.010(b) (Deering 2020).

11. *Id.* § 2026.010(b); *see also* 16 California Forms of Pleading and Practice § 193.121 (Matthew Bender).

12. *See generally* CAL. CIV. PROC. CODE § 2027.010 (Deering 2020).

13. *See generally* Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters ch. I, art. 1, opened for signature Mar. 18, 1970, 23 U.S.T. 2555, 847 U.N.T.S. 231 [hereinafter Hague Convention].

14. *Id.* at arts. 1–2, 8–9; *see also id.* at arts. 18–31; *see also* People's Republic of China Declaration of Reservations regarding arts. 4, 16, 23, 33,

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 327

Section 1989 and the Hague can delay cases by six months or more.¹⁵ They can also increase costs because parties must hire local counsel. Therefore, a procedure that compels corporate parties to produce witnesses—including foreign witnesses—to give testimony is important for any litigator to know.

Referencing the above-fact pattern, Section 1989 and the Hague would require the California litigator to follow Chinese discovery procedures pursuant to the Hague.¹⁶ The California litigator would have to hire local counsel and a local process server to personally serve the deposition notice, brief local counsel on the questions to be asked, and schedule the deposition through the Chinese court system.¹⁷ It is better to avoid these uncertainties. Enter PMQ/PMK depositions.

II. WHAT ARE PMQ DEPOSITIONS?

A deposition is sworn testimony.¹⁸ The deposing attorney is given wider latitude in her questions than she would during trial testimony.¹⁹ “[A]ny party may obtain discovery regarding any matter, not

<https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=493&disp=resdn> [hereinafter China’s Reservations to Hague Convention].

15. See Tony Abdollahi, *The Hague Convention: A Medium for International Discovery*, 40 N.C. J. INT’L L. & COM. REG. 771, 783 (2014); see also *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist.*, 482 U.S. 522, 542–43 (1987).

16. See Hague Convention, *supra* note 8, at arts. 1–2, 8–9; see also *id.* at arts. 18–31; China’s Reservations to Hague Convention, *supra* note 9.

17. China’s Reservations to Hague Convention, *supra* note 9. The People’s Republic of China reserved its sovereign rights against Article 16 upon accession. Therefore, only local judicial officers can execute discovery on behalf of international litigants. Article 16 would have granted diplomatic officers, i.e., consular officers, the right to conduct discovery on behalf of their nationals. See *id.*; see also Hague Convention, *supra* note 8, at art. 16.

18. CAL. CIV. PROC. CODE § 2025.330(a) (Deering 2020).

19. The deposition is a discovery tool. Therefore, questions regarding any matter that is not privileged and either, is itself is admissible, or is “reasonably calculated to lead to the discovery of admissible evidence,” may be asked. CAL. CIV. PROC. CODE § 2017.010 (Deering 2020). However, at trial, courts may only admit evidence that is relevant. CAL. EVID. CODE §§ 350–351 (Deering 2020). Therefore, it is improper for deponent’s counsel to instruct a witness not to answer a question based on relevance. CAL. CIV. PROC. CODE § 2014.010.

privileged, that is relevant . . . or appears reasonably calculated to lead to the discovery of admissible evidence.”²⁰ Testimony given during a deposition carries the same force and effect as testimony given at trial.²¹

Corporations can be compelled as witnesses:

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, *the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent.*²²

The PMQ/PMK is the person designated by the company to speak as the corporation regarding the specific questions and topics described in the deposition notice.²³ It is possible that testimony given during a deposition can be introduced at trial via excerpts of the transcript being read into the record for the jury to consider.²⁴ Furthermore, the deposing attorney is given greater latitude to ask questions during a deposition provided the question is “reasonably calculated to lead to the discovery of admissible evidence” and does not infringe on privileged matters.²⁵ Accordingly, defending attorneys are constrained in restricting testimony.²⁶ Finally, the testimony given during a PMQ/PMK deposition can be introduced against the corporation in

20. CAL. CIV. PROC. CODE § 2014.010 (Deering 2020).

21. *Id.* § 2025.620(a)–(g).

22. *Id.* § 2025.230 (emphasis added).

23. *See id.*

24. *See id.* § 2025.620(a)–(g); *see also* *Leasman v. Beech Aircraft Corp.*, 48 Cal. App. 3d 376, 380 (1975) (“Admissions contained in depositions and interrogatories are admissible in evidence to establish any material fact.”); *Gammell v. Gammell*, 90 Cal. App. 3d 90, 95 (1979) (“Depositions must be read into evidence”); *In re Estate of Doyle*, 126 Cal. App. 446, 451–453 (1932).

25. CAL. CIV. PROC. CODE § 2017.010 (Deering 2020); CAL. EVID. CODE § 954 (Deering 2020).

26. *Wilson v. 21st Century Ins. Co.*, 136 Cal. App. 4th 97, 112 (2006) (holding “[d]eposition questions are not objectionable on the ground the answers might be excluded at trial.”).

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 329

subsequent legal actions.²⁷ The stakes for the company are therefore high.

III. COMPELLING PMQ/PMK TESTIMONY FROM AN OBSTRUCTIONIST CORPORATE DEFENDANT

The deposing attorney cannot select the PMQ/PMK.²⁸ The party responding to the deposition notice “designate[s] and produce[s]” the agent “most qualified to testify on its behalf as to those matters.”²⁹ The corporate defendant is required to produce the person most competent to testify about the noticed matters. However, it is possible a corporate defendant may obstruct the discovery process by designating witnesses who are ignorant of the matters described in the deposition notice. In this instance, the deposing attorney must ask questions illustrating the designated PMQ/PMK cannot give testimony on behalf of the corporation. The deposing attorney may suspect who the corporation should designate as its PMQ/PMK, but it ultimately does not matter who the corporation designates provided the designated individual can answer the questions. If the corporate defendant obstructs the discovery process by failing to designate a competent witness as its PMQ/PMK, the deposing attorney can compel the defendant corporation to produce a competent individual. The deposing attorney will likely have to go through at least one unqualified witness before she can compel the corporate defendant to produce the right person or persons. However, she should not be dissuaded by such tactics. The following section describes in general, and by example, the steps a litigator will likely go through to compel the corporate defendant to cooperate.

First, the litigator must draft the PMQ/PMK deposition notice to identify topics and documents that are discoverable and likely within

27. The decades-long litigation against cigarette companies exemplifies the power of PMQ/PMK testimony. Litigation attorneys used PMQ/PMK testimony recorded in the 1950s and 60s to establish that cigarette companies were aware that smoking caused cancer. See Ronald M. Davis, Clifford E. Douglas & John K. Beasley, *The Tobacco Deposition and Trial Testimony Archive (DATTA) Project: Origins, Aims, and Methods*, 15 TOBACCO CONTROL iv4 to iv8 (2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563580/pdf/iv4.pdf>.

28. See CAL. CIV. PROC. CODE § 2025.230 (Deering 2020).

29. *Id.*

the knowledge or control of the corporate defendant.³⁰ The burden is then on the corporate defendant to designate the person or persons who can competently testify about the identified topics and documents.³¹

For example, at issue in the fact pattern was whether Peter could reverse pierce the corporate veil and hold XYZ Corp. liable for the contracts David entered. Accordingly, the PMQ/PMK deposition notice sought records and information related to the communications between David and Peter and XYZ Corp.'s capitalization (i.e. how it got money, from which accounts, in what amounts, and on what days). These matters were relevant and discoverable; therefore, XYZ Corp. must produce a PMQ/PMK witness.

Second, since the corporate defendant is obstructing discovery, the litigator will likely have to endure at least one deposition with a witness who cannot answer the questions or produce responsive records on behalf of the corporation. However, the litigator should not be discouraged. Indeed, these obstructionist tactics may demonstrate that the litigator may be on the correct strategy. The litigator should not approach this deposition as a waste of time. Instead, the litigator should depose the witness as if she can competently testify about the noticed matters to highlight the witness's inability. Excerpts of this testimony may be used as an exhibit in a subsequent motion to compel. In the fact pattern, XYZ Corp. produced the Corporate Secretary as the PMQ/PMK. The Corporate Secretary was able to testify as to some but not all the noticed matters. Indeed, the Corporate Secretary testified that he was ignorant at several points and identified David as the *only* person able to answer the questions. Therefore, the Corporate Secretary was not XYZ Corp.'s PMQ/PMK for *this* deposition.

Third, once the litigator learns the corporate defendant is obstructing the discovery process, the litigator should draft a meet and confer letter pursuant to California Code of Civil Procedure Section

30. "If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent." *Id.*

31. *See id.*

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 331

2016.040,³² asking the company to produce another individual as the PMQ/PMK. The meet and confer letter can identify particular individuals the deposing attorney believes may competently testify about the noticed matters but the corporate defendant may designate whomever can testify competently.³³ The meet and confer letter should be written in anticipation of filing a motion to compel. It should therefore include proposed dates, times, and locations which are most convenient for the company—not the litigator. The litigator must take every possible step to ensure the burden on the corporation is not onerous as these issues will come up later.³⁴ The letter should also be drafted as if it were a brief with facts and law supporting the litigator’s position that a different person must be produced. The letter should also include excerpts from the deposition testimony demonstrating the first witness’s inability to testify competently about the noticed matters. The audience for the meet and confer is opposing counsel, but the letter may become an exhibit in a motion to the court. Accordingly, the litigator should conduct herself as if her words and actions will be scrutinized by the court.

Fourth, the corporate defendant should engage in a good faith attempt meet and confer to resolve the concerns raised in the litigator’s

32. “A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” *Id.* § 2016.040.

33. CAL. CIV. PROC. CODE § 2025.230 (Deering 2020).

34. “If, after service of a deposition notice, a party to the action or . . . a person designated by an organization that is a party under Section 2025.230 . . . to proceed with [], or to produce for inspection any document . . . or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent’s attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice.” *Id.* § 2025.450(a). The “motion shall set forth specific facts showing *good cause* justifying the production for inspection of any document.” *Id.* at (b)(1) (emphasis added).

An argument could be made that a motion to compel should be pursuant to Section 2024.480:

If a deponent fails to answer any question . . . under the deponent’s control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. Cal. Code Civ. Proc. § 2025.480.

However, as a general practice tip, it is better to prepare for the worst (in this case, establishing good cause) and hope for the best.

letter. However, if the corporate defendant does not, then the litigator must file a motion to compel.³⁵ The litigator must attach a declaration attesting that she engaged in a good faith attempt to resolve the dispute informally but was unsuccessful.³⁶ The motion must also describe why discovery of this testimony is crucial.³⁷ In referencing the fact pattern, an issue in the case was whether Peter could reverse pierce the corporate veil to hold XYZ Corp. liable for David's obligations. The final step is oral argument and waiting for the decision. However, the primary arguments should be made in the motion.

A. What if that Individual Is a Foreign Resident?

Generally, under Section 1989, a non-California resident "is not obliged to attend as a witness before any court, judge, [or] justice . . ." in the State of California.³⁸ However, using PMQ/PMK, a litigator can compel a corporation subject to California jurisdiction to produce a foreign-resident witness as the corporation's PMQ/PMK pursuant to California Code of Civil Procedure Sections 2025.250 and 2025.260.³⁹ While Section 2025.250(a) generally restricts a California court from compelling a natural person to travel to California to give testimony in-state if the witness is not a resident of California,⁴⁰ artificial persons do not enjoy similar protections:

(b) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal

35. See CAL. CIV. PROC. CODE §§ 2025.450(a), 2025.480 (Deering 2020).

36. *Id.* §§ 2025.450(b)(2), 2025.480(b).

37. *Id.* §§ 2025.450(b)(1); see also § 2025.480.

38. "A witness, including a witness specified in subdivision (b) of Section 1987, is not obliged to attend as a witness before any court, judge, justice or any other officer, unless the witness is a resident within the state at the time of service." CAL. CIV. PROC. CODE § 1989.

39. See generally *id.* §§ 2025.250, 2025.260.

40. "Unless the court orders otherwise under Section 2025.260, the deposition of a *natural person*, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either *within 75 miles of the deponent's residence*, or *within the county where the action is pending and within 150 miles of the deponent's residence.*" *Id.* § 2025.250 (emphasis added).

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 333

executive or business office in California, or within the county where the action is pending and within 150 miles of that office.

(c) Unless the organization consents to a more distant place, the deposition of any other *organization shall be taken within 75 miles of the organization's principal executive or business office in California*.

(d) If an organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either *within the county where the action is pending*, or *within 75 miles of any executive or business office in California of the organization*.⁴¹

Each subsection provides a different method to determine the place for taking the deposition of a corporate defendant, and all subsections require the corporate defendant to give deposition testimony *in California*.⁴²

The corporate defendant may oppose the motion and seek leave to have the deposition taken at a more distant location.

California Code of Civil Procedure Section 2025.260(a) provides:

A party desiring to take the deposition of a natural person who is a party to the action or an *officer, director, managing agent, or employee of a party* may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under Section 2025.250.

The corporate defendant may argue that the court “take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent’s attendance at the more

41. *Id.* § 2025.250(b)–(d) (emphasis added).

42. Note, for section 2025.250 to apply, the company must maintain a “principal,” “executive,” or “business office” in California. *Id.* § 2025.250(b). However, if the company is registered to do business in California, it is required to maintain a business office within the state. *See* CAL. CORP. CODE §§ 200 (corporations), 2105(a) subds. (1)–(6) (foreign corporations); *see also* CAL. CORP. CODE §§ 15909.02(a) subds. (1)–(7), 16959 subds. (a)–(v), 17708.02(a) subds. (1)–(6) (Deering 2020).

distant place.”⁴³ However, this argument overlooks a critical defect in the statutory scheme.

Section 2025.260(a) and (b) reference taking the deposition of a “natural person” or an “officer, director, managing agent, or employee of a party.”⁴⁴ This definition refers to natural persons and to specific persons who work for a corporate party.⁴⁵ PMQ/PMK depositions do not name natural persons.⁴⁶ In fact, the deposing attorney is not permitted to name any director, office, or employee as the corporate defendant’s PMQ/PMK.⁴⁷ The PMQ/PMK deposition notice identifies the corporate defendant and it is up to the corporation to designate the person or persons who will testify on its behalf.⁴⁸ Accordingly, the Section 2025.260 balancing test should not apply to corporations which are subject to California jurisdiction.

Furthermore, Section 2025.260, when read in conjunction with Section 2025.250(a) shows that the Legislature did specifically

43. The Court “shall take into consideration any factors tending to show the interests of justice will be served,” including but not limited to the following seven (7) factors:

- (1) Whether the moving party selected the forum.
- (2) Whether the deponent will be present to testify at the trial of the action.
- (3) The convenience of the deponent.
- (4) The feasibility of conducting the deposition by written questions under Chapter 11 (commencing with Section 2028.010), or of using a discovery method other than a deposition.
- (5) The number of depositions sought to be taken at a place more distant than that permitted under Section 2025.250.
- (6) The expense to the parties of requiring the deposition to be taken within the distance permitted under Section 2025.250.
- (7) The whereabouts of the deponent at the time for which the deposition is scheduled.

Cal. Civ. Proc. Code § 2025.260(b)(1)–(7) (2020).

44. CAL. CIV. PROC. CODE § 2025.260(a) (2020); *see also* CAL. CIV. PROC. CODE § 2025.250(a).

45. *Id.*

46. CAL. CIV. PROC. CODE § 2025.230 (2020).

47. *Id.*

48. *Id.*

2020] CALIFORNIA-BASED IN-PERSON DEPOSITION TESTIMONY 335

reference “natural” persons and “organizations.”⁴⁹ Therefore, since Section 2025.250 differentiates between “natural” and “organization” witnesses, so too should Section 2025.260.⁵⁰

IV. USING PMQ/PMK IN BROADER CONTEXTS

The PMQ/PMK deposition procedure can be used by a California litigator to compel in-person, in-state testimony of a foreign resident if that individual is named by the corporate defendant as its PMQ/PMK. Preferably, the corporate defendant produces the person or persons most knowledgeable of the noticed matters as its PMQ/PMK. However, if a corporate defendant seeks to obstruct the discovery process, it cannot avoid its discovery obligations by designating in-state agents ignorant of the noticed matters to testify on its behalf. Consider the following examples:

Corp. Z is subjected to a series of allegations that it did not adequately protect employees from sexual harassment. Corp. Z has a human resources department, but it is located out of state.

Corp. E is sued after an accident results in the release of deadly gases that injures hundreds in a small town. Corp. E was warned by a government agency but failed to act. Corp. E’s safety department is located out of state.

Corp. T was started by Person T, a “tech visionary,” and former employee of Corp. G, an established technology company. Person T surrenders his American citizenship and moves to Singapore, but he continues to control Corp. T remotely. Corp. G sues Corp. T and Person T for intellectual property theft.

In each of these scenarios, it is possible for a California litigator to compel the corporate defendant to produce its PMQ/PMK to give testimony in California—even if that person or persons do not reside in

49. *See id.* § 2025.250.

50. *See generally* William N. Eskridge, Jr. & Phillip P. Frickey, *Article: Statutory Interpretation As Practical Reasoning*, 42 STAN. L. REV. 321 (1990); *see also* CAL. CIV. PROC. CODE § 4 (2020) (“The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice.”); *Ryder v. Los Altos*, 125 Cal. App. 2d 209, 211 (1954) (for purposes of statutory construction, statutes and “codes blend into each other and are to be regarded as constituting but a single statute.”).

California. In example one, the litigator must notice topics and records which would be within the purview of the human resources department and are relevant to the case. For example, the litigator might ask for records showing Corp. Z investigated the sexual harassment, records of discipline, retained internal communications showing the harassment, or a copy of the internal complaint. Corp. Z could brief another person, a California resident, as to how the human resources department acted in response to the complaint, but that person would not know the events as intimately as someone within the department. It is possible the PMQ/PMK may even testify that someone from the human resources department would be a better witness for the noticed matters.

Similarly, in example two, the California litigator could ask for communications and information between Corp. E's safety office and the government official who sent the warning. If the California litigator suspected specific people within the safety department ignored the government's warning, the deposition notice could request call logs, transcripts, and internal recordkeeping documents to investigate which individuals knew about the warning, when, and what Corp. E did in response. The California litigator could use these documents to identify topics to which those individuals would have knowledge. Corp. E would either have to produce the person or persons who can testify competently about the safety oversight or designate an agent that may be unable to testify as to these topics.

Finally, in example three, a California litigator could compel Person T to come to California—despite surrendering his citizenship—because he is the only person who can testify as to how Corp. T developed (or acquired) its technology. In example three, Person T intentionally structured Corp. T to obfuscate potential wrongdoing. However, by ensuring that only Person T holds information related to the alleged intellectual property theft, the California litigator can compel Corp. T to produce Person T in-state to give testimony.

V. RECAP

Ideally, the corporate defendant will produce the person competent to testify on its behalf. However, if the corporate defendant is obstructing the process, PMQ/PMK deposition procedures can be used to compel the corporation to designate a competent agent—even if that person does not reside in the State of California.