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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,
Respondent,
v.
SOFIYA ALEXANDRA GOLDSHTEYN,
Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

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Electronically FILED by Superior Court of California, County of Los Angeles 8/11/2022 5:34 PM Sherri R. Carter, Executive Officer/Clerk, By C. Palos, Deputy Clerk
22STFL08826
Assigned for all purposes to: Commissioner Scott J. Nord, (Department, ST2B).

FL-100

PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER:	FOR COURT USE ONLY
NAME: Max David Borenstein (In Pro Per) FIRM NAME: Max David Borenstein (In Pro Per) STREET ADDRESS: 20830 Pacific Coast Highway CITY: Los Angeles STATE: CA ZIP CODE: 90263 TELEPHONE NO.: 818-613-5544 FAX NO.: E-MAIL ADDRESS: maxborenstein@mac.com ATTORNEY FOR (name): Max David Borenstein (In Pro Per)	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: SAME CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central	
PETITIONER: Max David Borenstein RESPONDENT: Sofiya Alexandra Goldshteyn	
PETITION FOR ☐ **AMENDED** ☒ **Dissolution (Divorce) of:** ☒ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER: 22STFL08826

1. **LEGAL RELATIONSHIP** *(check all that apply):*
   a. ☒ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.

2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☒ Petitioner ☐ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, unless you are in the legal relationship described in 1b., at least one of you must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*

3. **STATISTICAL FACTS**
   a. ☒ (1) Date of marriage *(specify):* 12/31/2014 (2) Date of separation *(specify):* 4/6/2022
   (3) Time from date of marriage to date of separation *(specify):* 7 Years 3 Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent *(specify below):*
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months

4. **MINOR CHILDREN**
   a. ☒ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children listed above were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*

Form Adopted for Mandatory Use
Judicial Council of California
FL-100 [Rev. January 1, 2020]

PETITION—MARRIAGE/DOMESTIC PARTNERSHIP
(Family Law)

Family Code, §§ 297, 299, 2320, 2330, 3409
www.courts.ca.gov

PETITIONER: Max David Borenstein (In Pro Per) RESPONDENT: Sofiya Aexandra Godshteyn	CASE NUMBER:

Petitioner requests that the court make the following orders:

5. **LEGAL GROUNDS** (Family Code sections 2200–2210, 2310–2312)

a. [X] Divorce or [ ] Legal separation of the marriage or domestic partnership based on *(check one):*
(1) [X] irreconcilable differences. (2) [ ] permanent legal incapacity to make decisions.

b. [ ] Nullity of void marriage or domestic partnership based on
(1) [ ] incest. (2) [ ] bigamy.

c. [ ] Nullity of voidable marriage or domestic partnership based on
(1) [ ] petitioner's age at time of registration of domestic partnership or marriage.
(2) [ ] prior existing marriage or domestic partnership.
(3) [ ] unsound mind.
(4) [ ] fraud.
(5) [ ] force.
(6) [ ] physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to.....	[ ]	[ ]	[ ]	[ ]
b. Physical custody of children to.....	[ ]	[ ]	[ ]	[ ]
c. Child visitation (parenting time) be granted to	[ ]	[ ]		[ ]

As requested in [ ] form FL-311 [ ] form FL-312 [ ] form FL-341(C)
[ ] form FL-341(D) [ ] form FL-341(E) [ ] Attachment 6c(1)

7. **CHILD SUPPORT**

a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
b. An earnings assignment may be issued without further notice.
c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
d. [ ] Other *(specify):*

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**

a. [X] Spousal or domestic partner support payable to [ ] Petitioner [X] Respondent
b. [ ] Terminate (end) the court's ability to award support to [ ] Petitioner [ ] Respondent
c. [X] Reserve for future determination the issue of support payable to [X] Petitioner [ ] Respondent
d. [ ] Other *(specify)*:

9. **SEPARATE PROPERTY**

a. [ ] There are no such assets or debts that I know of to be confirmed by the court.
b. [ ] Confirm as separate property the assets and debts in [ ] *Property Declaration* (form FL-160). [ ] Attachment 9b.

[ ] the following list. Item Confirm to

The full nature and extent of separate property is not known at this time. At such time as that information becomes available it shall be included in the disclosures. The Petition shall be amended, as needed, with said information.

PETITIONER: Max David Borenstein (In Pro Per) RESPONDENT: Sofiya Aexandra Godshteyn	CASE NUMBER:

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**
    a. ☐ There are no such assets or debts that I know of to be divided by the court.
    b. ☐ Determine rights to community and quasi-community assets and debts. All such assets and debts are listed
    ☐ in *Property Declaration* (form FL-160) ☐ in Attachment 10b.
    ☐ as follows *(specify)*:
    The full nature and extent of community property is not known at this time. At such time as that information becomes available it shall be included in Petitioner's disclosure documents and the Petition shall be amended as needed.

11. **OTHER REQUESTS**
    a. ☒ Attorney's fees and costs payable by ☒ Petitioner ☒ Respondent
    b. ☐ Petitioner's former name be restored to *(specify)*:
    c. ☐ Other *(specify)*:

    ☐ Continued on Attachment 11c.

12. **I HAVE READ THE RESTRAINING ORDERS ON THE BACK OF THE SUMMONS, AND I UNDERSTAND THAT THEY APPLY TO ME WHEN THIS PETITION IS FILED.**

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

Date: 8/3/2022

Max David Borenstein
(TYPE OR PRINT NAME)

DocuSigned by:
44F8DCDC6BC848A...
(SIGNATURE OF PETITIONER)

Date: 8/3/2022

Max David Borenstein (In Pro Per)
(TYPE OR PRINT NAME)

DocuSigned by:
44F8DCDC6BC848A...
(SIGNATURE OF ATTORNEY FOR PETITIONER)

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation* (**form FL-107-INFO**) and visit "Families Change" at ***www.familieschange.ca.gov*** — an online guide for parents and children going through divorce or separation.

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

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FL-120

PARTY WITHOUT ATTORNEY OR ATTORNEY	FOR COURT USE ONLY
NAME: J.R. Howell, Esq. STATE BAR NUMBER: 268086 FIRM NAME: Law Office of J.R. Howell STREET ADDRESS: 1223 Wilshire Boulevard. P.O.Box 543 CITY: Santa Monica STATE: CA ZIP CODE: 90403 TELEPHONE NO.: 202-650-8867 FAX NO.: E-MAIL ADDRESS: jrhowell@jrhlegalstrategies.com ATTORNEY FOR (*name*): Respondent, Sofiya Alexandra Goldshtevn	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: SAME CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Central	
PETITIONER: Max David Borenstein (In Pro Per) RESPONDENT: Sofiya Alexandra Goldshtevn	
RESPONSE ☐ **AND REQUEST FOR** ☐ **AMENDED** ☒ **Dissolution (Divorce) of:** ☐ Marriage ☐ Domestic Partnership ☐ **Legal Separation of:** ☐ Marriage ☐ Domestic Partnership ☐ **Nullity of:** ☐ Marriage ☐ Domestic Partnership	CASE NUMBER: 22STFL08826

1. **LEGAL RELATIONSHIP** *(check all that apply):*
   a. ☒ We are married.
   b. ☐ We are domestic partners and our domestic partnership was established in California.
   c. ☐ We are domestic partners and our domestic partnership was NOT established in California.
2. **RESIDENCE REQUIREMENTS** *(check all that apply):*
   a. ☒ Petitioner ☑ Respondent has been a resident of this state for at least six months and of this county for at least three months immediately preceding the filing of this *Petition. (For a divorce, unless you are in the legal relationship described in 1b., at least one of you must comply with this requirement.)*
   b. ☐ Our domestic partnership was established in California. Neither of us has to be a resident or have a domicile in California to dissolve our partnership here.
   c. ☐ We are the same sex, were married in California, but currently live in a jurisdiction that does not recognize, and will not dissolve, our marriage. This *Petition* is filed in the county where we married.
   Petitioner lives in *(specify):* Respondent lives in *(specify):*
3. **STATISTICAL FACTS**
   a. ☒ (1) Date of marriage *(specify):* 12/31/2014 (2) Date of separation *(specify):* 08/23/2022
   (3) Time from date of marriage to date of separation *(specify):* 7 Years 8 Months
   b. ☐ (1) Registration date of domestic partnership with the California Secretary of State or other state equivalent *(specify below):*
   (2) Date of separation *(specify):*
   (3) Time from date of registration of domestic partnership to date of separation *(specify):* Years Months
4. **MINOR CHILDREN**
   a. ☒ There are no minor children.
   b. ☐ The minor children are:

Child's name	Birthdate	Age

   (1) ☐ continued on Attachment 4b. (2) ☐ a child who is not yet born.
   c. If any children were born before the marriage or domestic partnership, the court has the authority to determine those children to be children of the marriage or domestic partnership.
   d. If there are minor children of Petitioner and Respondent, a completed *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (form FL-105) must be attached.
   e. ☐ Petitioner and Respondent signed a voluntary declaration of parentage or paternity. *(Attach a copy if available.)*

PETITIONER: Max David Borenstein (*In Pro Per*) RESPONDENT: Sofiya Alexandra Goldshteyn	CASE NUMBER: 22STFL08826

Respondent requests that the court make the following orders:

5. **LEGAL GROUNDS** (Family Code sections 2200–2210; 2310–2312)
   a. [ ] **Respondent contends** that the parties never legally married or registered a domestic partnership.
   b. [ ] **Respondent denies** the grounds set forth in item 5 of the petition.
   c. [x] **Respondent requests**
      (1) [x] Divorce [ ] Legal separation of the marriage or domestic partnership based on
         (a) [x] irreconcilable differences. (b) [ ] permanent legal incapacity to make decisions.
      (2) [ ] Nullity of void marriage or domestic partnership based on
         (a) [ ] incest. (b) [ ] bigamy.
      (3) [ ] Nullity of voidable marriage or domestic partnership based on
         (a) [ ] respondent's age at time of registration of domestic partnership or marriage.
         (b) [ ] prior existing marriage or domestic partnership.
         (c) [ ] unsound mind.
         (d) [ ] fraud.
         (e) [ ] force.
         (f) [ ] physical incapacity.

6. **CHILD CUSTODY AND VISITATION (PARENTING TIME)**

	Petitioner	Respondent	Joint	Other
a. Legal custody of children to	[ ]	[ ]	[ ]	[ ]
b. Physical custody of children to	[ ]	[ ]	[ ]	[ ]
c. Child visitation (parenting time) be granted to	[ ]	[ ]		[ ]

   As requested in [ ] form FL-311 [ ] form FL-312 [ ] form FL-341(C)
   [ ] form FL-341(D) [ ] form FL-341(E) [ ] Attachment 6c(1)

7. **CHILD SUPPORT**
   a. If there are minor children born to or adopted by Petitioner and Respondent before or during this marriage or domestic partnership, the court will make orders for the support of the children upon request and submission of financial forms by the requesting party.
   b. An earnings assignment may be issued without further notice.
   c. Any party required to pay support must pay interest on overdue amounts at the "legal" rate, which is currently 10 percent.
   d. [ ] Other *(specify)*:

8. **SPOUSAL OR DOMESTIC PARTNER SUPPORT**
   a. [x] Spousal or domestic partner support payable to [ ] Petitioner [x] Respondent
   b. [ ] Terminate (end) the court's ability to award support to [ ] Petitioner [ ] Respondent
   c. [ ] Reserve for future determination the issue of support payable to [ ] Petitioner [ ] Respondent
   d. [ ] Other *(specify)*:

9. **SEPARATE PROPERTY**
   a. [ ] There are no such assets or debts that I know of to be confirmed by the court.
   b. [ ] Confirm as separate property the assets and debts in [ ] *Property Declaration* (form FL-160). [ ] Attachment 9b.
      [ ] the following list. Item Confirm to
      Respondent does not know the full nature and extent of any separate property, nor what Petitioner contends is separate property. Petitioner is in possession of the vast majority, if not all, of the documents and information necessary to determine whether any separate property exists. Respondent will amend this response, as appropriate, when such information is provided and discovery has been completed.

PETITIONER: Max David Borenstein (*In Pro Per*) RESPONDENT: Sofiya Alexandra Goldshteyn	CASE NUMBER: 22STFL08826

10. **COMMUNITY AND QUASI-COMMUNITY PROPERTY**

a. [ ] There are no such assets or debts that I know of to be divided by the court.

b. [ ] Determine rights to community and quasi-community assets and debts. All such assets and debts are listed

[ ] *Property Declaration* (form FL-160). [ ] Attachment 10b.

[ ] as follows *(specify)*:

Respondent does not know the full nature and extent of community property, nor the values of same. Respondent does not know what Petitioner claims is community property, nor his asserted value of same. Petitioner is in possession of the vast majority, if not all, of the documents and information necessary to determine the extent and value of community property. Respondent will amend this response, as appropriate, upon receipt of needed information and once discovery has been completed.

11. **OTHER REQUESTS**

a. [x] Attorney's fees and costs payable by [x] Petitioner [x] Respondent

b [ ] Respondent's former name be restored to *(specify)*:

c. [ ] Other *(specify)*:

[ ] Continued on Attachment 11c..

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

Date: Oct 14, 2022

Sofiya Alexandra Goldshteyn
(TYPE OR PRINT NAME)

Sofiya Alexandra (Oct 14, 2022 09:45 PDT)
(SIGNATURE OF RESPONDENT)

Date: Oct 14, 2022

J.R. Howell, Esq. (SBN 268086)
(TYPE OR PRINT NAME)

J.R. Howell
(SIGNATURE OF ATTORNEY FOR RESPONDENT)

FOR MORE INFORMATION: Read *Legal Steps for a Divorce or Legal Separation* (**form FL-107-INFO**) and visit "Families Change" at **www.familieschange.ca.gov** — an online guide for parents and children going through divorce or separation.

NOTICE: You may redact (black out) social security numbers from any written material filed with the court in this case other than a form used to collect child, spousal or partner support.

NOTICE—CANCELLATION OF RIGHTS: Dissolution or legal separation may automatically cancel the rights of a domestic partner or spouse under the other domestic partner's or spouse's will, trust, retirement plan, power of attorney, pay-on-death bank account, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel the right of a domestic partner or spouse as beneficiary of the other partner's or spouse's life insurance policy. You should review these matters, as well as any credit cards, other credit accounts, insurance polices, retirement plans, and credit reports, to determine whether they should be changed or whether you should take any other actions. Some changes may require the agreement of your partner or spouse or a court order.

The original response must be filed in the court with proof of service of a copy on Petitioner.

Electronically FILED by Superior Court of California, County of Los Angeles 10/14/2022 11:46 AM Sherri R. Carter, Executive Officer/Clerk, By A. Gonzalez, Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 268086 NAME: J.R. Howell, Esq. FIRM NAME: Law Office of J.R. Howell STREET ADDRESS: 1223 Wilshire Boulevard, P.O. Box 543 CITY: Santa Monica STATE: CA ZIP CODE: 90403 TELEPHONE NO.: (202) 650-8867 FAX NO.: None E-MAIL ADDRESS: jrhowell@jrhlegalstrategies.com ATTORNEY FOR (*name*): Respondent, Sofiya Alexandra Goldshteyn	*FOR COURT USE ONLY*
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: Same CITY AND ZIP CODE: Los Angeles, CA BRANCH NAME: Central	
PLAINTIFF/PETITIONER: Max David Borenstein (In Pro Per) DEFENDANT/RESPONDENT: Sofiya Alexandra Goldshteyn	CASE NUMBER: 22STFL08826 JUDICIAL OFFICER: Unassigned
PROOF OF ELECTRONIC SERVICE	DEPARTMENT: Unassigned

1. I am at least 18 years old.
   a. My residence or business address is *(specify)*:
      1223 Wilshire Boulevard, P.O. Box 543
      Santa Monica, CA 90403
      (Business Address)
   b. My electronic service address is *(specify)*:
      jrhowell@jrhlegalstrategies.com

2. I electronically served the following documents *(exact titles)*:

   FL-120 RESPONSE - MARRIAGE/DOMESTIC PARTNERSHIP

   ☐ The documents served are listed in an attachment. *(Form POS-050(D)/EFS-050(D) may be used for this purpose.)*

3. I electronically served the documents listed in 2 as follows:
   a. Name of person served: MAX DAVID BORENSTEIN (IN PRO PER)

      On behalf of *(name or names of parties represented, if person served is an attorney)*:
      MAX DAVID BORENSTEIN (IN PRO PER)
   b. Electronic service address of person served :
      maxborenstein@mac.com
   c. On *(date)*: Oct. 14, 2022

   ☐ The documents listed in item 2 were served electronically on the persons and in the manner described in an attachment. *(Form POS-050(P)/EFS-050(P) may be used for this purpose.)*

Date: Oct. 14, 2022

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

J.R. Howell, Esq. (SBN 268086)
(TYPE OR PRINT NAME OF DECLARANT)

J.R. Howell
(SIGNATURE OF DECLARANT)

Form Approved for Optional Use
Judicial Council of California
POS-050/EFS-050 [Rev. February 1, 2017]

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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Executive Officer/Clerk of Court,
By J. Esplana, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S TRIAL SETTING CONFERENCE BRIEF** TRIAL SETTING CONFERENCE: Date: March 4, 2025 Time: 8:30AM Place: Dept. 2B

INTRODUCTION

Respondent, Sofiya A. Goldshteyn ("Sofiya"), hereby submits this Trial Setting Conference Brief in connection with the trial in this matter, which has not yet been scheduled.

I. Requested Relief.

Pursuant to this Trial Setting Conference Brief, Sofiya requests that the Court (i) set trial dates in this matter; and (ii) assist the parties in setting a discovery schedule.

II. Statistical Information and Background Facts.

A. *Statistical Information*. The Parties were married on December 31, 2014, and separated at some point in 2022. The exact date of separation is in dispute. They have no children but they do have a number of unimplanted embryos that Sofiya wants the chance to bring to term, although she would not want child support from Max.

Max's Petition for Dissolution (*in pro per*) was filed with the Court on August 11, 2022, although it wasn't served on Sofiya until September 26, 2022. Sofiya's response was timely filed on October 14, 2022.

The Parties signed a contract for spousal support and the payment of attorney and expert fees and litigation costs on August 31, 2022.

B. *Background Facts*. Sofiya is 42 years old. She is a writer, actress, and comedian. During the Parties' marriage, Sofiya was diagnosed with breast cancer at the age of 33. After a lengthy period of treatment involving chemotherapy, radiation, and powerful medications, Sofiya was given a diagnosis that she was no longer positive for tumor markers—she beat cancer. But, since that time, she has remained on powerful medications that have had a series of side effects that have had a deleterious impact on her health.

Prior to beginning cancer treatment, Sofiya underwent procedures to retrieve her eggs so that she and Max could have children in the future. Subsequently, all of Sofiya's eggs were fertilized with Max's sperm. During the marriage, there were three efforts at bringing some of the embryos to term, resulting in as many miscarriages. The Parties separated before making further attempts. The unimplanted embryos remain in cryostorage.

Max is 43 years old. He is a writer, showrunner, and producer. Before Sofiya's cancer diagnosis, she was a working writer with rising success in television. She partnered with Max in the management of his career and his role as a showrunner at HBO. Max eventually teamed with Sofiya on a television show that she wrote. Max facilitated the attachment of a well-known actor

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and the development of the show with well-respected industry professionals. After the separation, Max abandoned that partnership and the opportunities for Sofiya lapsed. She is continuing to develop her career independent of Max's involvement.

C. *Litigation and Mediation History*. Since November of 2022, the Parties have attended more than 20 mediation sessions. After nearly a year in mediation, Max terminated the first mediator. Sofiya then agreed to attend mediation sessions before a private judge scheduled for February 13 and 14, 2024. Days before the mediation, Max served thousands of pages of bank statements, financial account records, and other documents that he had been withholding for months despite Sofiya's requests. There was insufficient time to analyze these documents and to prepare financial reports (MSOL, CSPB, etc.), and, as a result, Sofiya canceled the mediation. Max immediately served a series of written discovery requests and noticed Sofiya's deposition.

To date, Max has served on Sofiya more than 400 Requests for Production of Documents and noticed her deposition three times. As Sofiya's stipulated income is $7,000.00 per month and nearly all of the relevant financial accounts are in Max's exclusive possession and control, the amount of discovery Max has propounded on Sofiya is grossly disproportionate to the amount of relevant information she possesses. Responding to Max's discovery requests is, in part, a substantial driver of litigation costs and why Sofiya requests an order regarding discovery sequences, deadlines, and cutoff dates at the TSC, as set forth below.

III. Discovery Status.

A. Written Discovery. The Parties have served written discovery and are in a dialogue as to Max's excessive requests, Max's objections to Sofiya's requests, and outstanding documents and disclosures due from Max.

B. Expert Discovery. Expert discovery has not taken place. Sofiya anticipates expert testimony from her forensic accountant, as well as experts on (i) medical and legal issues pertaining to the unimplanted embryos and California's Reproductive Privacy Act; (ii) Sofiya's medical issues pertaining to her claim for spousal support; (iii) experts related to Sofiya's interest in the HBO payment guarantee (discussed below); (iv) experts related to the valuation, characterization, and allocation of community intellectual property, residuals, and royalties; and additional experts pertaining to the trial issues set forth below. As most of these experts have not yet begun their work, their reports have yet to be issued. An appropriate trial date will need to

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take into account a discovery period to allow for the development of these reports and discovery into the same.

C. Depositions. Sofiya's deposition was taken on February 24, 2025. Max has yet to sit for his deposition and no other depositions have taken place.

IV. Events Since The August Trial Setting Conference.

An initial TSC was scheduled for August 23, 2024. That TSC was continued by consent of the Parties. Subsequently, the Parties agreed to a stipulation on mediation and other issues on August 30, 2024.

A. *Max's Breach of the Spousal Support Agreement*. During the Summer of 2024, Sofiya raised a number of issues pertaining to Max's breach of the spousal support agreement. Max asserted that before Sofiya could litigate her breach of contract claim against him, she was required to attend at least 2 hours of mediation per the terms of the contract's dispute resolution clause. The contract further contains a mandatory attorney fee provision requiring Max to pay Sofiya's attorney fees and costs incurred as a result of enforcing the agreement. As a result, the Parties agreed via stipulation to submit to mediation before a private judge on November 13, 2024. The stipulation required Max to make payment from the community accounts (Sofiya does not have access to these) to pay off outstanding balances with her forensic accounting firm and her attorneys. The stipulation also called for a pre-payment of fees from the community accounts to to fund Sofiya's representation up to November 13, 2024.

The Parties mediated on that date and continued to attend mediation sessions in December and January. When a further mediation session was scheduled for February of 2025, Sofiya asked that Max make funds available from the community accounts to pay her professional fees per their written contract. Max refused and insisted that Sofiya pay those fees out of her separate property funds—despite the contract clause explicitly stating that her separate funds were not to be used for these purposes and mandating that Max make community funds available for the same. In part for this reason and Max's failure to make a settlement offer despite multiple requests for the same, Sofiya canceled the February mediation. Max then served Sofiya with a deposition notice and a request for 151 requests of production of documents—above and beyond the approximately 260 requests for production already served on her.

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B. *Sofiya's Spousal Support Request*. Sofiya originally filed under seal her RFO for Spousal Support on April 23, 2024. A conference on that issue was held in chambers and Sofiya agreed to re-file with more narrowly tailored redactions. The re-filed RFO for Spousal Support was set for a hearing on October 31, 2024. Max filed an *ex parte* application to re-schedule Sofiya's support request, which Sofiya opposed, but which the Court granted and scheduled the hearing for January 2, 2025. As a part of the mediation process, the Parties stipulated to continue the spousal support hearing to May 1, 2025, in exchange for Max's agreement to pay Sofiya a higher monthly amount, albeit on a temporary basis. Sofiya's pending temporary spousal support request seeks an order setting a consistent monthly amount and an order for retroactive payment.

V. Trial Issues.

The following issues will need to be adjudicated at the time of trial:

A. *Date of Separation*.

The Parties' dispute of the date of separation impacts the characterization, allocation, valuation, and disposition of a disputed $19,000,000.00 (nineteen million dollars) payment guarantee clause in Max's contract with HBO.

Max asserts a date of separation of April 6, 2022. Sofiya asserts a separation date of August 23, 2022. On July 1, 2022, Max's renewed contract with HBO became effective. This contract included a payment guarantee of $19,000,000.00 (nineteen million dollars), and additional sizable compensation for specific events and services. Sofiya claims that the community has an interest in this payment guarantee. Max appears to take a different position and his date of separation appears to be asserted in relation to that position.

Because of the amount at issue and the number of fact witnesses and expert witnesses involved, Sofiya proposes a bifurcated trial on the date of separation issue and related payment guarantee dispute.

B. *Disposition of the Unimplanted Embryos*.

Sofiya asserts her right under California's Reproductive Privacy Act to choose to bear a child. *See* Cal. Health and Safety Code § 123462 ("The state shall not deny or interfere with the fundamental right of a pregnant individual or an individual who may become pregnant to choose to bear a child."). This right is combined with her Constitutional right to reproductive freedom. Cal. Const. Art I., §1.1. Max chose to bear a child and chose to exercise his own rights to reproductive freedom when he agreed to inseminate the embryos in question. The Constitution

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forbids the state from taking any action that interferes with Sofiya's choice to bear a child, one that is her last chance at biological motherhood. A trial is necessary to adjudicate Sofiya's constitutional and legal rights.

C. *Disposition of the Financial Accounts*.

The Parties have a number of bank accounts, investment accounts, and retirement accounts, all of which are subject to commingling issues to be resolved at trial.

D. *Disposition of Community Property Residuals and Royalties*.

The community has an interest in highly valuable intellectual property as well as the rights to residuals and royalty payments whose character and allocation are subject to dispute.

E. *Disposition of the Parties' Interests in Real Estate.*

The community has an interest in at least three pieces of real property. One of those properties was a home in Malibu that burned down in the Palisades fire in January of 2025. Another property is titled in the name of a business co-owned and co-mortgaged by both Parties, but which Max maintains is his separate asset for which the community is liable on the debt. Max has made a number of frivolous claims to reimbursement and separate property contentions that must be litigated before the disposition of these assets can be decided.

F. *Permanent Spousal Support*.

Sofiya seeks an opportunity to present evidence of the factors set forth in Family Code § 4320.

G. *Post-Separation Accounting and Reconciliation of Expenses*.

The Parties have disputes as to the post-separation accounting and reconciliation of expenses, largely due to the disagreement as to the date of separation and the disposition of the HBO payment guarantee. Early resolution of that question will drive resolution and possibly settlement of these questions.

H. *Petitioner's Breach of the Parties' Written Spousal Support Agreement and Respondent's Claim to Damages and Attorney Fees Stemming from the Breach*.

As set forth above, Max has breached the Parties' written spousal support agreement signed and dated August 31, 2022. Sofiya seeks a trial on the damages she suffered as a result of the breach and enforcement by the Court of the contract's attorney fee provision.

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I. *Family Code Section 1101 and 271 Claims, Breach of Trust, and Breach of Fiduciary Duty Claims*.

Sofiya has a series of claims for breach of fiduciary duty and claims under Family Code §§ 1101 and 271. These claims arise, in part, from Max's extensive financial misconduct and violations of fiduciary duties during their marriage and divorce proceedings. Evidence shows that Max siphoned hundreds of thousands of dollars from jointly owned accounts held in the Borenstein-Goldshteyn Family Trust without Sofiya's knowledge, concealed substantial cash transfers from joint accounts, instructed the Parties' investment advisor to conceal financial accounts and transactions from Sofiya, forged Sofiya's signature on tax returns and withheld hundreds of thousands of dollars in community tax refunds, failed to disclose millions in income and investments, and made unilateral financial decisions that left the community estate with unpaid debts and pending tax liabilities.

Max has deprived Sofiya of access to community funds, deprived her of her capacity to invest funds in parity with the marital standard of living, and made disposition, transfers, investments, and withdrawals of community funds without her knowledge, her consent, and, in some cases, over her express objections.

These claims include ATRO violations involving Max's cancelation of Sofiya's car insurance without notice, which led to a lawsuit against her after she was in a car accident. These claims also include Max's entering Sofiya's home against her will, after which material financial records became inaccessible.

Despite multiple requests for transparency and court orders, Max continued to obstruct discovery, evade financial disclosures, and misrepresent his income and assets, forcing Sofiya to sell community investments under false pretenses and leaving her to cover liabilities he created. His pattern of deception and noncompliance demonstrates bad faith, justifying Sofiya's claims for breach of fiduciary duty under Family Code section 1101 and sanctions under Family Code section 271.

J. *Characterization and Custodial Issues of Sofiya's Dog and the Parties' Cats*.

The Parties have three pets whose ownership and custodial arrangements are in dispute. It is not in the best interests of these pets to live with a shared custody arrangement in the future. Nor is it in their best interests to remain with Max, for various reasons to be adduced at trial.

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Sofiya seeks a trial pursuant to Family Code § 2605 to present evidence of these facts in the best interests of the dog and two cats.

VI. Trial Bifurcation.

Pursuant to *California Rules of Court*, Rule 5.390, Sofiya requests that the Court issue a Family Code § 2451 Court-ordered Case Resolution Plan including (1) the use of telephone conference calls to ascertain the status of the case; (2) a discovery plan to prevent Sofiya from suffering further discovery harassment from Max; and (3) bifurcation of issues for trial in stages as follows:

A. *Stage One.* Sofiya requests that the Court set for hearing a separate trial solely on the date of separation and the characterization, allocation, valuation, and disposition of the HBO payment guarantee.

Sofiya anticipates significant expert and fact witnesses in an estimated 10 day trial for Stage One.

B. *Stage Two*. Sofiya requests a trial on all remaining issues apart from the attorney fee issues reserved for stage three. These hearings will include expert testimony as to the embryos, Sofiya's medical issues as they pertain to the embryos and spousal support, and other experts and fact witnesses on issues related to residuals, royalties, and Max's breaches of fiduciary duties.

Sofiya estimates a 12 day trial involving expert and fact witnesses for Stage Two.

C. *Stage Three*. Sofiya requests a final trial on liability for attorney fees stemming from the breach of contract and other claims litigated in stages one and two.

Sofiya proposes that the Court set telephonic conferences in accordance with Family Code § 2451 to avoid the need to file multiple *ex parte* requests for relief to deal with simple calendaring and case management issues as this case will likely require multiple hearing days consisting of the taking of the testimony of multiple fact and expert witnesses.

Sofiya also requests that the Court set staged Mandatory Settlement Conferences in accordance with *California Rules of Court*, Rule 3.1380, for each of the stages designated above.

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Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: February 28, 2025

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

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Attorneys for Petitioner,
Max David Borenstein

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By V. Cabrera, Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **PETITIONER'S TRIAL SETTING CONFERENCE BRIEF** DATE: March 4, 2025 TIME: 8:30 AM DEPT: 2B

Petitioner MAX DAVID BORENSTEIN ("Max" or "Petitioner") submits the following brief in anticipation of the March 4, 2025 trial setting conference ("TSC") in the above-entitled dissolution proceeding ("this proceeding") pending between he and Respondent SOFIYA ALEXANDRA GOLDSHTEYN ("Sofiya" or "Respondent"):

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I. STATISTICAL INFORMATION

A.	**Petitioner:**	Max David Borenstein (DOB: 06/20/1981)
B.	**Respondent:**	Sofiya Alexandra Goldshteyn (DOB: 11/30/1982)
C.	**Date of Marriage:**	December 31, 2014
D.	**Date of Separation:**	April 6, 2022 (per Max)
		August 23, 2022 (per Sofiya)
E.	**Length of Marriage:**	7 years, 3 months (per Max's date of separation)
		7 years, 8 months (per Sofiya's date of separation)
F.	**Minor Children:**	None

II. PROCEDURAL INFORMATION

A.	**Petition Filed:**	August 11, 2022
B.	**Response Filed:**	October 14, 2022
C.	**Future Proceedings:**	March 4, 2025 – Trial Setting Conference
		May 1, 2025 – Sofiya's RFO re Spousal Support
D.	**Disputed Issues:**	Date of Separation
		Disposition of Cryopreserved Embryos
		Division of Assets and Debts
		Reimbursements
		Spousal Support
		Sanctions

III. BRIEF SUMMARY OF ISSUES

This is a short-term marriage of seven years and some months. The Parties have attempted mediation multiple times—Sofiya unilaterally cancelled a pre-paid, two-day mediation with Judge Hoy mere days before it was to proceed in February of 2024; she again unilaterally cancelled a full day mediation with Judge Lewis, terminating a months-long process. The case has been pending for two and a half years. Max requires a trial date. Sofiya is represented by three different law firms, has spent hundreds upon hundreds of thousands of dollars in attorney and expert fees and costs, and, if her TSC brief is to be believed, is asking the Cout for three

different trials, including a 10-day trial just on the issue of characterization of a contract (that requires Max to preform services daily, yet Sophia claims is 100% community property). The insanity and fee spend must be mitigated. Max seeks that:

1. A trial date be set;
2. The Court case manage the case pursuant to, without limitation, California Rules of Court Rule 5.83; and,
3. Sofiya's pending RFO for spousal support be continued to the time of trial to mitigate the expenditure of resources and for judicial economy.

IV. RELEVANT PRIOR ORDERS

A. Stipulation and Order Entered September 19, 2023

This Order provided for the filing of joint 2022 Income Tax Returns and reserved on the allocation of the refund, which was to be split between the parties, the character of the income reflected in the returns and the character and allocation of an approximately $500,000 defined benefit plan and profit-sharing deposit.

B. Stipulation and Order Entered June 28, 2024

The relevant portions of said stipulation and order are set forth below:

> 3. Respondent shall be imputed with employment income of $7,000 per month for all purposes in this case, including pendente lite requests for orders, trial, and post-trial requests for order, if any, for all of which Respondent's imputation of employment income of $7,000 per months shall be res judicata.
>
> 4. The Court hereby reserves jurisdiction on adjudicating Petitioner's request for Family Code 271 sanctions responsive to the First Sealing RFO and as requested in his VE RFO to the time of trial or settlement.

C. Stipulation and Order Entered October 9, 2024

The relevant portions of said stipulation and order are set forth below:

> 1. Petitioner shall advance the sum of $300,000 directly to the Law Office of J.R. Howell Attorney Client Trust Account, which advance shall be used by Respondent for the payment of her attorney and forensic fees and costs in the herein matter. Said advance shall be without prejudice and subject to reallocation,

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recharacterization and chargeability at the time of trial or settlement, jurisdiction for which is reserved by the Court.

2. Petitioner shall advance the sum of $55,468.53 directly to Brody Pennell Heating and Air Conditioning for Invoice No. 24360707 related to the real property commonly known as 11540 Clover Avenue, Los Angeles, CA 90066. Said advance shall be without prejudice and subject to reallocation, recharacterization and chargeability at the time of trial or settlement, jurisdiction for which is reserved by the Court.

3. Payments by Petitioner pursuant to paragraph 1 and 2 of the herein Stipulation and Order shall be due on or before September 1, 2024.

4. The parties shall present for and attend a Voluntary Settlement Conference on November 13, 2024, at Signature Resolution Services, with Honorary Judge Thomas Trent Lewis, Retired, presiding as mediation officer.

5. Petitioner's expert(s) shall provide their reports and all back-up documentation reviewed in compiling same to Respondent's expert(s) on or before September 30, 2024. The parties' forensic accountants shall meet and confer on or before October 31, 2024, on the following issues, for which they shall prepare and agree on a joint side by side statement (outlining the agreements and disagreements of the parties' respective forensics on the various line items contained on the following reports) on or before November 7, 2024:

a. Marital Standard of Living
b. Community/Separate Property Balance Sheet
c. Cashflow available for support
d. Post-separation accounting

6. The parties shall exchange all documents via their forensic accountants that are reviewed or used by the expert in preparing any report pursuant to Paragraph 5, which documents shall be provided as soon as possible, but in no event more than five (5) days from any request (unless such days include Jewish holidays, in which case the due date shall extend by the number of days that are Jewish holidays).

7. As of August 5, 2024, all party discovery, inclusive of motion to compel deadlines, is stayed, subject to a 30-day written recall notice. The provision of the herein Paragraph 7 shall not apply to discovery issued by either party to third party witnesses.

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D. Ex Parte Orders Entered October 14, 2024

On August 19, 2024, Sofiya filed an RFO Regarding Spousal Support ("Sofiya's pending RFO"), which was set for hearing on October 31, 2024. On October 14, 2024, Max filed an ex parte RFO requesting a continuance of the October 31, 2024 hearing. The Court granted Max's ex parte request, and continued the hearing on Sofiya's pending RFO to January 2, 2025.

E. Stipulation and Order Entered November 8, 2024

The relevant portions of said stipulation and order are set forth below:

> 7. Respondent hereby withdraws the Request for Order to Compel Further Responses from Third-Party Subpoena Deponent Anonymous Content Entertainment, Inc., and for Sanctions.
>
> 8. The Clerk of the Court is Ordered to remove the hearing on the Request for Order dated November 21, 2024, at 8:30AM from the Court's docket.
>
> 9. Each party shall bear their own costs and attorney's fees.

F. Stipulation and Order Entered November 15, 2024

The relevant portions of said stipulation and order are set forth below:

> 1. Respondent's RFO for spousal support, filed August 23, 2024, shall be continued to the first available date in May of 2025 available on the Court's calendar.
>
> 2. Petitioner shall pay the following sums to Respondent, without prejudice and subject to reallocation, recharacterization and chargeability:
>
> > a. On or before December 1, 2024, Petitioner shall pay $42,568.41 to Respondent as and for his payment for his obligation through November 13, 2024, pursuant to Paragraph 4.2 of the Temporary and Provisional Pre-Mediation Spousal Support and Attorneys' Fees Agreement dated August 31, 2024 ("the Agreement").
> >
> > b. On or before December 1, 2024, Petitioner shall pay $100,000 to Respondent.
> >
> > c. On or before February 1, 2025, Petitioner shall pay $50,000 to Respondent.
> >
> > d. On or before February 1, 2025, Petitioner shall pay

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$25,000 to Respondent towards his obligations pursuant to Paragraph 4.2 of the Agreement for the time period of November 14, 2024, through April 30, 2025.

e. All of Petitioner's payments to Respondent pursuant to the herein Paragraph 2 and its subparts shall be a credit towards any spousal support order payable by Petitioner to Respondent.

f. On or before January 15, 2025, Respondent shall provide to Petitioner the foundational documents (billing statements, invoices, bank statements, credit card statements, etc.) and accounting for any funds expended by Respondent for which she seeks or has sought reimbursement pursuant to Paragraph 4.2 of the Agreement from the commencement of the Agreement through November 13, 2024, and shall likewise update said accounting through April 30, 2025 on or before May 7, 2025.

3. All party discovery is stayed subject to a 30 day recall.

4. Petitioner shall continue his payment pursuant to Paragraphs 2.1 of the Agreement to Respondent.

5. The provisions of Paragraph 2 shall stay Petitioner's responsibilities to comply with Paragraph 4.2 of the Agreement, EXCEPT Petitioner shall continue to pay the mortgage, property taxes, insurance, gardener, pool service and utilities for the real property commonly known as 11540 Clover Avenue, Los Angeles, CA 90066 ("Clover property") and shall maintain the health insurance for Respondent; Respondent shall meet her other expenses as outlined in Paragraph 4.2 of the Agreement with the advance pursuant to Paragraph 2(d) herein above. Respondent shall maintain her own car insurance commencing December 1, 2024, and housekeeper, if any.

6. In light of the likely necessity of selling the Clover property, on or before December 15, 2024, the parties, through counsel, shall select a mutually agreeable listing broker for the Clover property and shall obtain a written listing agreement and written repair recommendations, if any, from said broker.

7. The parties shall join all qualified retirement plans to the action on or before December 15, 2024. The parties shall retain Darren Goodman, Esq., for the division of their retirement assets and shall equally pay any fees incurred with Mr. Goodman and shall cooperate with Mr. Goodman's reasonable requests for information

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and signatures.

8. The parties shall participate in further mediation sessions with Hon. Judge Thomas Trent Lewis, Retired, on the following dates and times:

a. November 21, 2024, 8:00 a.m.—9:00 a.m.

b. December 16, 2024, 8:00 a.m.—9:00 a.m.

c. December 30, 2024, 9:00 a.m.—5:00 p.m.

d. The parties' forensic accountants shall update their draft reports through October 31, 2024, exchange any and all reports and foundational materials and meet and confer and prepare a joint side by side of the differences in their reports on or before December 13, 2024. If there are further documents in the possession of either party, needed by the accountants to complete this task, the holder of the document will exchange with the other party by November 25, 2024.

9. The issue of pendente lite attorneys' fees and costs and expert fees and costs shall be reserved to be heard at the same time as Respondent's support RFO pursuant to Paragraph 1, hereto.

G. <u>Stipulation and Order Entered November 21, 2024</u>

The relevant portions of said stipulation and order are set forth below:

1. The Parties are currently in mediation with Judge Thomas Trent Lewis (Ret.) of Signature Resolution. Said mediation effort commenced on November 13, 2024, and is set to continue on November 21, 2024, December 16, 2024, and December 30, 2024.

2. There is a Trial Setting Conference ("TSC") scheduled for 8:30 AM on November 21, 2024 in Department 2B of the Los Angeles Superior Courthouse located at 111 N. Hill Street, Los Angeles, CA 90012 ("the TSC").

3. To allow for the mediation referenced above, the TSC shall be continued to a date on or after March 1, 2025, subject to the availability of the Parties, their respective attorneys, and the Court.

H. <u>Minute Order Dated January 2, 2025</u>

Pursuant to the Parties' Stipulation and Order entered November 15, 2024 (see Paragraph IV(F), above), the Court continued the RFO previously scheduled for January 2, 2025 to May 1,

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2025 at 8:30 AM in Stanley Mosk Dept. 2B.

V. DATE OF SEPARATION

A. Background

While Max and Sofiya agree that their date of marriage is December 31, 2014, a dispute exists between them as to their date of separation. Max contends that he and Sofiya separated on April 6, 2022, while Sofiya contends they separated four and a half (4½) months later, on August 23, 2022.

B. Legal Argument

In the context of a dissolution proceeding, the "date of separation" is the date of the complete and final break in the marital relationship, which occurs when at least one of the spouses expresses their intent to end the marriage, then proceeds to act in accordance with that intent. (Fam. Code, § 70, subd. (a).) Whether this confluence of intent and conduct has occurred is a factual issue to be established by a preponderance of the evidence (*In re Marriage of Peters* (1997) 52 Cal.App.4th 1487, 1493-1494) upon the mandatory consideration of all relevant evidence. (Fam. Code, § 70, subd. (b).) While California's courts have taken a broad view of what constitutes relevant evidence in date of separation determinations, they have also made clear that the best evidence of whether a party perceives the rift in their marriage is final "is their words and actions". (*In re Marriage of Hardin* (1995) 38 Cal.App.4th 448, 453.)

Here, a preponderance of the relevant evidence shows that this confluence of intent and conduct occurred on April 6, 2022, when, after months of conflict and multiple failed attempts at marital counseling, Max informed Sofiya of his intent to end their marriage. Since then, Max and Sofiya have led separate lives; living in separate residences, ending their sexual relationship, and limiting their communication to logistical discussions about their dog Munch, their houseplants, and how to ensure they did not cross paths when travelling to and from their two Los Angeles-area homes. In the course of these communications, Max remained clear and unwavering in his representations to Sofiya about his intent to end their marriage. The Parties did not continue their sexual relationship or make any attempt to reconcile, nor did they continue to travel together, socialize with one another, celebrate holidays together, or otherwise maintain

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the appearance of being married. These facts are consistent with those highlighted by California's appellate courts in cases where the parties were found to have separated (*In re Marriage of Lee and Lin* (2019) 41Cal.App.5th 698, 704) and unlike those highlighted in cases where they were not (*In re Marriage of Marsden* (1982) 130 Cal.App.3d 426; *In re Marriage of von der Nuell* (1994) 23 Cal.App.4th 730; *In re Marriage of Baragry* (1977) 73 Cal.App.3d 444).

Sofiya has asserted a date of separation of August 23, 2022—the day after Max filed for dissolution. This assertion is specious when, in the months between April 6, 2022 and August 23, 2022, Sofiya repeatedly confirmed her understanding of Max's decision to end their marriage and actively participated in the logistics of dividing their lives. It is, therefore, clear that Sofiya's date of separation is nothing more than an attempt to inappropriately claim as community property income paid to Max pursuant to a July 1, 2022 agreement between HBO and Steeplechase Amusements, Inc.

VI. DISPOSITION OF CRYOPRESERVED EMBRYOS

A. Background

Between July 2021 and February 2022, the Parties participated in two cycles of in-vitro fertilization ("IVF") at the Southern California Center for Reproductive Medicine ("SCCRM"). These cycles resulted in a total of 20 embryos: one embryo from the 2021 cycle, which is the product of Max's sperm and Sofiya's egg, and 19 embryos from the 2022 cycle, which are the product of Max's sperm and donor eggs (collectively, "the Embryos"). The Embryos are currently held in cryopreservation storage by Ovation Fertility Storage Solutions ("Ovation"), SCCRM's laboratory affiliate.

Max and Sofiya executed two documents that included disposition plans for the embryos in the event of their divorce or legal separation. On July 10, 2021, they signed SCCRM's Assisted Reproductive Technology ("ART") Informed Consent form ("ART Consent"). As shown therein, Max and Sofiya agreed that, in the event of divorce, dissolution, or legal separation, all of their cryopreserved embryos in storage were to be donated to medical research. On February 8, 2022, the Parties signed Ovation's Storage Consent form. As shown therein, Max and Sofiya agreed that, in the event of their divorce or separation, any of their

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cryopreserved embryos stored at Ovation were to be discarded.

A dispute has arisen between the Parties regarding the disposition of the Embryos. While Max would like the Embryos discarded in accordance with the February 2022 Storage Consent, Sofiya now wishes to have ownership of the Embryos transferred to her, so that she can bring "at least one" to term as soon as possible.

B. <u>Legal Argument</u>

The choices available to couples regarding to the disposition of embryos created through ART are codified under section 125315 of the Health and Safety Code, which provides, in relevant part:

> "(a) A physician and surgeon or other health care provider delivering fertility treatment shall provide his or her patient with timely, relevant, and appropriate information to allow the individual to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the fertility treatment.
>
> […]
>
> "(b) Any individual to whom information is provided pursuant to subdivision (a) shall be presented with the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research. When providing fertility treatment, a physician and surgeon or other health care provider shall provide a form to the male and female partner, or the individual without a partner, as applicable, that sets forth advanced written directives regarding the disposition of embryos. This form shall indicate the time limit on storage of the embryos at the clinic or storage facility and shall provide, at a minimum, the following choices for disposition of the embryos based on the following circumstances:
>
> […]
>
> (3) In the event of separation or divorce of the partners, the embryos shall be disposed of by one of the following actions:
> (A) Made available to the female partner.
> (B) Made available to the male partner.
> (C) Donation for research purposes.
> (D) Thawed with no further action taken.
> (E) Donation to another couple or individual.
> (F) Other disposition that is clearly stated."

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To date, there is only one published case addressing the application of section 125315 in the context of divorce: the San Francisco Superior Court's opinion in the case of *Findley v. Lee* (2016 WL 270083) ("*Findley*"). The facts of *Findley* are nearly identical to those in this proceeding: prior to undergoing IVF, a husband and wife signed a consent agreement that complied with the requirements of section 125315. As indicated by their initials therein, they elected to thaw and destroy any embryos that remained in cryopreservation should they ever choose to divorce. However, after the husband informed his wife of his intent to end their marriage, she expressed her desire to attempt a pregnancy using the embryos. When the husband denied his consent, the wife moved for an order transferring the embryos to her. In its Statement of Decision denying the wife's request, the *Findley* court found that, "*the statutory scheme in California encourages courts to conclude that written directives fulfilling the requirements of Health and Safety Code section 125315 are binding contracts between the parties under the appropriate circumstances, such as those present in this case*".

The only authority offered by Sofiya in support of her drastic change in position are Article 1, section 1.1 of the California Constitution (which provides that "the state shall not deny or interfere with an individual's reproductive freedom"), and Section 123462 of the California Health and Safety Code (which provides that "*every pregnant individual or individual who may become pregnant has the fundamental right to choose to bear a child [...] the state shall not deny or interfere with the fundamental right of a pregnant individual or an individual who may become pregnant to choose to bear a child*"). Both these statutory invocations are red herrings, as freedom from state interference does not equal freedom from private contractual obligations. Moreover, Sofiya's proposed course of action would force Max—the only Party whose DNA is part of all the embryos—to father a child against his will, an outcome specifically criminalized under the Penal Code[1] and denounced by the court in *Findley*.[2]

1. "It shall be unlawful for anyone to knowingly use sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider's signature on a written consent form." (Pen. Code, § 367g, subd. (a).)

2. At page 39 of its Statement of Decision, the Findley court held that, "[Husband's] right not to be compelled to be a parent with [Wife] outweighs [Wife's] right to have a biologically related child".

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VII. DIVISION OF ASSETS AND DEBTS/REIMBURSEMENTS/CREDITS

Per proposed Community/Separate Property Balance Sheet.

VIII. SPOUSAL SUPPORT

A. Background

As discussed above, Max and Sofiya separated on April 6, 2022, after a marriage of seven (7) years, three (3) months. Since September 1, 2022, Max has been paying Sofiya spousal support of $20,000 per month pursuant to a mediation agreement, as well as paying tens of thousands of dollars per month in direct expenses for Sofiya, including all of her housing expenses, all of the community property obligations of the Parties, and hundreds upon hundreds of thousands of dollars in litigation costs incurred by Sofiya (where there has been exactly one contested hearing in this case which was resolved by stipulation on the day of the hearing).

B. Argument

Given that the Parties' marriage was not one of long duration, it is appropriate that Sofiya receive spousal support for no longer than three (3) years, eight (8 months). Since Max has already been paying Sofiya support for two (2) years and seven (7) months, his support obligation should not extend for more than an additional one (1) year and one (1) month, at which point his spousal support obligation should terminate.

The amount of spousal support payable from Max to Sofiya should be a function of their marital standard of living, less Sofiya's earning capacity and a reasonable five percent (5%) rate of return on the community property awarded to her in this proceeding. As shown below, this calculation results in a monthly spousal support award to Sofiya of $17,677:

Marital Standard of Living[3]	=	$37,472
Sofiya's Earning Capacity[4]	=	$7,000

3. Attached hereto is a copy of a report on the Parties' marital standard of living, prepared by Max's forensic accountant based on the three-year period preceding the Parties' date of separation. As shown therein, the Parties' average monthly spending during that period was $37,472.

4. As set forth in the Stipulation and Order entered June 28, 2024, Sofiya has been imputed with employment income of $7,000 per month for all purposes in this proceeding.

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Rate of Return on Sofiya's CP[5] = $12,795

TOTAL MONTHLY SUPPORT = **$17,677**

IX. ATTONEY FEES/SANCTIONS

A. Background

Since the outset, Max has approached this proceeding from a cooperative posture, in the hopes that he and Sofiya could avoid acrimonious litigation and preserve their financial resources. These hopes, however, have not come to fruition, due in large part to the gamesmanship, outright deception, and other dilatory tactics deployed by Sofiya. Instances of this conduct have abounded, several examples of which are described below.

i. February 2024 Mediation with Judge Hoy

The parties had been working with Jennifer Magnes ("Ms. Magnes") of White, Zuckerman, Warsavsky, Luna & Hunt ("WZWLH") as their joint forensic accountant. Ms. Magnes provided the Parties' initial draft reports in December of 2023, with an eye on a two-day mediation in February of 2024 scheduled with Judge Hoy.

In December and January, counsel for Max provided additional documents to Ms. Magnes to address issues in the draft reports, based on which the reports were revised by Ms. Magnes. Sofiya then unilaterally cancelled the two-day mediation mere days before it was to go forward, foregoing the over $20,000 in fees advanced by Max. The mediation never went forward. Sofiya then refused for ANY of WZWLH's finished work product, on which the parties spent six figures, to be available to the Parties or to continue to use WZWLH. The Parties had to hire new forensic accountants and start the accounting from scratch.

ii. Recent Mediation Issues

After no less than four separate sessions with Judge Lewis over the course of three months, Sofiya again unilaterally cancelled mediation.

///

5. As shown in the Community Property Balance Sheet prepared by Mr. Reichman, Max proposes that Sofiya be awarded community property totaling $3,070,900 ($1,757,153 in assets and $1,313,747 in retirement accounts), which, when multiplied by a 5% rate of return, yields an annual total of $153,545 (or $12,795 per month).

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iii. Multiple Unnecessary Motions

Sofiya has likewise filed multiple motions seeking to file records under seal in contravention of the seminal *Burkle* decision alleging that, because the parties are (arguably) in the public eye (Max is a writer, Sofiya is a comedian and podcaster who claims to earn nothing from her comedy and podcast efforts). Even when presented with the *Burkle* authority, and even AFTER the Los Angeles Superior Court Form Protective Order was issued in this case by stipulation of the Parties, Sofiya insisted proceeding on her ill-advised motions, requiring Judge Nord to seek a chambers conference from counsel to ask counsel for Sofiya what it is that they were trying to accomplish in light of the foregoing. Sofiya did not proceed with her motions following the chambers conference, but Max had to incur the fees in responding to same and attending the hearing.

iv. Discovery Games

Sofiya at first wholly failed to respond do discovery, stopping just short of quoting the Magna Carta in her objections (including objecting to every single Form Interrogatory notwithstanding the Judicial Council's adoptions of same), and then dumped 5,000 unorganized pages, all of which were produced to WZWLH by Max, claiming that the sheer volume of the pages produced proves that she has fully complied with discovery. It took Max's counsel a week and a half of paralegal time to just sort the production so that a proper meet and confer process could commence.

v. Sofiya's RFO re Spousal Support

As discussed above, on August 30, 2024, the Parties entered into a stipulation and order in which they agreed to attend mediation on November 13, 2024. Among the substantial benefits that inured to Sofiya under this stipulation were a **$300,000 contribution** from Max towards her attorney's fees and costs—an amount Max has paid in full—as well as a temporary stay of her still-outstanding responses to Max's demand for document production and family law form interrogatories.

Unbeknownst to Max, on August 19, 2024, Sofiya's attorneys filed—but decided not to serve—an RFO seeking six-figure temporary spousal support from Max. It was served on

September 29, 2024—six weeks after it had been filed. Not only did this inexplicable delay in service render Max unable to conduct the discovery necessary to fully respond to such a motion, had Max known that Sofiya had a pending motion for spousal support, he would not have agreed to a discovery stay.

When counsel for Max reached out to Sofiya's attorneys to request that they continue the RFO until after the Parties' mediation, they refused, absent an agreement from Max to pay yet additional support to Sofiya. Given that Max was already paying Sofiya's mortgage, property taxes, car and health insurance, personal trainer, and dog walker—on top of $20,000 in monthly spousal support—Max could not agree to such a request absent an opportunity to depose Sofiya on the legitimacy of her new purported $100,000 monthly "need" which exceeds by over 100% the parties' marital standard of living. Such an opportunity was, however, denied to Max by Sofiya's attorneys.

As a result of this tactical display, Max was forced to seek the Court's intervention by filing an ex parte RFO seeking a continuance of her RFO until after the instant mediation. The Court granted this ex parte request, and Sofiya's RFO has been rescheduled to January 2, 2025 (and then continued again to May, 2025, after Max advanced another six-figure sum to Sofiya).

vi. <u>Forensic Accounting Obstruction</u>

In contravention of the stipulation and order executed by the Parties on August 30, 2024, Mr. Onisko failed to meet and confer with Mr. Reichman on or before October 31, 2024. By contrast, Mr. Reichman timely complied with his September 30, 2024 document transmission obligation, submitting financial reports accompanied by hundreds of pages of supporting documents.

Mr. Onisko finally provided a side by side, where Sofiya's claims are upwards of $7 million (including laying claim on a house owned by Max before marriage) with NOT AN IOTA OF BACKUP DOCUMENTATION to substantiate her balance sheet numbers, as the order required.

B. <u>Legal Argument</u>

Family Code section 271(a) provides, in relevant part:

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> "Notwithstanding any other provision of this code, the court may base an award of attorney's fees and costs on the extent to which any conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys. An award of attorney's fees and costs pursuant to this section is in the nature of a sanction. In making an award pursuant to this section, the court shall take into consideration all evidence concerning the parties' incomes, assets, and liabilities. The court shall not impose a sanction pursuant to this section that imposes an unreasonable financial burden on the party against whom the sanction is imposed. In order to obtain an award under this section, the party requesting an award of attorney's fees and costs is not required to demonstrate any financial need for the award."

The conduct described above has not only frustrated settlement at every turn of this proceeding—resulting in substantial delays in what should otherwise be a relatively straightforward dissolution action—it has caused Max to incur substantial fees and costs which would otherwise have been unnecessary. Max should not bear the burden of Sofiya's three law firms in this short term marriage matter, her pursuit of meritless legal claims, including that she be impregnated with Max's biological embryo(s) over his objection and her threat to litigate it up the appeal ladder for a decade.

Respectfully Submitted:

LAW OFFICES OF KAPLAN, TROPE, GEKHT & DECAROLIS

DATED: 03/03/2025 BY: _____

Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1250, Los Angeles, California 90024.

On March 3, 2025, I served the foregoing document described as **PETITIONER'S TRIAL SETTING CONFERENCE BRIEF,** on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in sealed envelope(s) addressed as follows:

J.R. Howell, Esq.
Law Office of J.R. Howell
1223 Wilshire Blvd.
P. O. Box 543
Santa Monica, CA 90403

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

Jason P. Koch, Esq.
The Law Office of Jason P. Koch
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

[ ] BY CAUSING TO BE PERSONALLY SERVED: I caused delivery of such envelope by hand to the offices of the addressee.

[ ] VIA OVERNIGHT DELIVERY: : I enclosed the documents in an envelope or package by an overnight delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. The envelope or package was designated for next business day delivery, with all charges billed to sender.

[XX] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the following electronic notification addresses: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com; jason@jasonkochlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 3, 2025, at Los Angeles, California.

Janet Castillo

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ATTORNEYS FOR RESPONDENT, SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, vs. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **PROOF OF SERVICE** Dept.: ST2B Action Filed: August 11, 2022 Trial Date: Not Set

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 3 W. Carrillo Street, Suite 216, Santa Barbara, California, 93101. My electronic notification address is jason@jasonkochlaw.com.

On June 2, 2025, I served the following document(s) described as **(i) CONFORMED COPY OF RESPONDENT'S REQUEST FOR ORDER FOR DEEMED ADMISSIONS OR, ALTERNATIVELY, TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION, TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, AND REQUEST FOR SANCTIONS; (ii) COURT ORDER FOR FAMILY-CENTERED CASE RESOLUTION CONFERENCE;** and **(iii) BLANK RESPONSIVE DECLARATION FORM** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST (next page)

☐ **BY U.S. POSTAL SERVICE:** This document was served by United States mail. I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Santa Barbara, California, in a sealed envelope with postage fully paid.

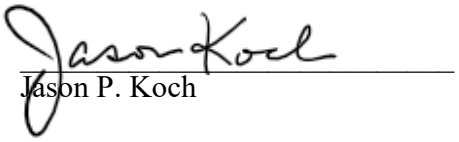
☐ **BY FACSIMILE:** The document(s) were served by facsimile. The facsimile transmission was without error and completed prior to 5:00 p.m. A copy of the transmission report is available upon request.

☐ **BY HAND DELIVERY:** The document(s) were left at the address indicated on the Service List, below.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 2, 2025, at Santa Barbara, California.



Jason P. Koch

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Anne E. Grover, Esq. Grover & Badalian LLC 11 N. Washington St., Suite 630 Rockville, MD 20850 agrover@gbfamilylawyers.com	Attorneys for Respondent, Sofiya A. Goldshteyn

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ATTORNEYS FOR RESPONDENT, SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, vs. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **PROOF OF SERVICE** Date: Time: Dept.: ST2B Action Filed: August 11, 2022 Trial Date: Not Set

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 3 W. Carrillo Street, Suite 216, Santa Barbara, California, 93101. My electronic notification address is jason@jasonkochlaw.com.

On May 30, 2025, I served the following document(s) described as **(i) UNCONFORMED COPY OF RESPONDENT'S REQUEST FOR ORDER FOR DEEMED ADMISSIONS OR, ALTERNATIVELY, TO COMPEL FURTHER RESPONSES TO REQUESTS FOR ADMISSION, TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES, AND REQUEST FOR SANCTIONS;** and **(ii) BLANK RESPONSIVE DECLARATION FORM** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST (next page)

☐ **BY U.S. POSTAL SERVICE:** This document was served by United States mail. I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Santa Barbara, California, in a sealed envelope with postage fully paid.

☐ **BY FACSIMILE:** The document(s) were served by facsimile. The facsimile transmission was without error and completed prior to 5:00 p.m. A copy of the transmission report is available upon request.

☐ **BY HAND DELIVERY:** The document(s) were left at the address indicated on the Service List, below.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on May 30, 2025, at Santa Barbara, California.

Jason Koch

Jason P. Koch

SERVICE LIST

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PARTY WITHOUT ATTORNEY OR ATTORNEY STATE BAR NUMBER: 268086
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ATTORNEY FOR (*name*): Sofiya Goldshteyn, Respondent

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: Same
CITY AND ZIP CODE: Los Angeles 90012
BRANCH NAME: Central District

PETITIONER: Max Borenstein
RESPONDENT: Sofiya Goldshteyn
OTHER PARENT/PARTY:

FOR COURT USE ONLY

Electronically FILED by
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County of Los Angeles
6/2/2025 9:52 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Barajas, Deputy Clerk

(Department, ST2B).
Hearing Information:
7/31/2025 8:30 AM

REQUEST FOR ORDER ☐ **CHANGE** ☐ **TEMPORARY EMERGENCY ORDERS**

☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Property Control ☐ Attorney's Fees and Costs
☒ Other *(specify)*: Motion to Compel Further Responses and Request for Sanctions

CASE NUMBER:
22STFL08826

Note: Read form FL-300-INFO for information about how to complete this form. To ask to change or end an order that was granted in a Restraining Order After Hearing (form DV-130 or JV-255), read form FL-300-INFO and form DV-300-INFO

NOTICE OF HEARING

1. TO *(name(s))*: Max Borenstein and his attorneys of record
   ☒ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify)*:

2. **A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room.:
   b. Address of court ☒ same as noted above ☐ other *(specify)*:

3. **WARNING to the person served with the *Request for Order:*** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date)*:
5. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date)*:
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location)*:
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
FL-300 [Rev. January 1, 2025]

Family Code, §§ 2045, 2107, 6224, 6226, 6320–6326, 6380–6383
Government Code, § 26826
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

REQUEST FOR ORDER

Note: Place a mark **X** in front of the box that applies to your case or to your request. If you need more space, mark the box for "Attachment." For example, mark "Attachment 2a" to indicate that the list of children's names and birth dates continues on a paper attached to this form. Then, on a sheet of paper, list each attachment number followed by your request. At the top of the paper, write your name, case number, and "FL-300" as a title. (You may use *Attached Declaration* (form MC-031) for this purpose.)

1. ☐ RESTRAINING ORDER INFORMATION
One or more domestic violence restraining/protective orders are now in effect between *(specify):*
☐ Petitioner ☐ Respondent ☐ Other Parent/Party *(Attach a copy of the orders if you have one.)*
The orders are from the following court or courts *(specify county and state):*
a. ☐ Criminal: County/state *(specify):* Case No. *(if known)*:
b. ☐ Family: County/state *(specify):* Case No. *(if known)*:
c. ☐ Juvenile: County/state *(specify):* Case No. *(if known)*:
d. ☐ Other: County/state *(specify):* Case No. *(if known)*:

2. ☐ CHILD CUSTODY ☐ I request temporary emergency orders
☐ VISITATION (PARENTING TIME)
a. I request that the court make orders about the following children *(specify):*

Child's Name	Date of Birth	☐ Legal Custody to *(person who decides: health, education, etc):*	☐ Physical Custody to *(person with whom child lives):*

☐ Attachment 2a.

b. ☐ The orders I request for ☐ child custody ☐ visitation (parenting time) are:
(1) ☐ Specified in the attached forms:
☐ Form FL-305 ☐ Form FL-311 ☐ Form FL-312 ☐ Form FL-341(C)
☐ Form FL-341(D) ☐ Form FL-341(E) ☐ Other *(specify):*
(2) ☐ As follows *(specify):* ☐ Attachment 2b.

c. The orders that I request are in the best interest of the children because *(specify):* ☐ Attachment 2c.

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

2. d. ☐ This is a change from the current order for ☐ child custody ☐ visitation (parenting time).
   (1) ☐ The order for legal or physical custody was filed on *(date)*: . The court ordered *(specify)*:

   (2) ☐ The visitation (parenting time) order was filed on *(date)*: . The court ordered *(specify)*:

☐ Attachment 2d.

3. ☐ CHILD SUPPORT
   (Note: An earnings assignment may be issued. See *Income Withholding for Support* (form FL-195)
   a. I request that the court order child support as follows:

Child's name and age	☐ I request support for each child based on the child support guideline.	Monthly amount ($) requested (if not by guideline)

☐ Attachment 3a.

   b. ☐ I want to change a current court order for child support filed on *(date)*:
   The court ordered child support as follows *(specify)*:

   c. I have completed and filed with this *Request for Order* a current *Income and Expense Declaration* (form FL-150) or I filed a current *Financial Statement (Simplified)* (form FL-155) because I meet the requirements to file form FL-155.
   d. The court should make or change the support orders because *(specify)*: ☐ Attachment 3d.

4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
   (Note: An *Earnings Assignment Order for Spousal or Partner Support* (form FL-435) may be issued.)
   a. ☐ Amount requested *(monthly)*: $
   b. ☐ I want the court to ☐ change ☐ end the current support order filed on *(date)*:
   The court ordered $ per month for support.
   c. ☐ This request is to modify (change) spousal or partner support after entry of a judgment.
   I have completed and attached *Spousal or Partner Support Declaration Attachment* (form FL-157) or a declaration that addresses the same factors covered in form FL-157.
   d. I have completed and filed a current *Income and Expense Declaration* (form FL-150) in support of my request.
   e. The court should should make, change, or end the support orders because *(specify)*: ☐ Attachment 4e.

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

5. ☐ PROPERTY CONTROL ☐ I request temporary emergency orders
   a. The ☐ petitioner ☐ respondent ☐ other parent/party be given exclusive temporary use, possession, and control of the following property that we ☐ own or are buying ☐ lease or rent *(specify):*

   b. The ☐ petitioner ☐ respondent ☐ other parent/party be ordered to make the following payments on debts and liens coming due while the order is in effect:
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____

   c. ☐ This is a change from the current order for property control filed on *(date):*
   d. Specify in Attachment 5d the reasons why the court should make or change the property control orders.

6. ☐ ATTORNEY'S FEES AND COSTS
   I request attorney's fees and costs, which total *(specify amount):* $. I filed the following to support my request:
   a. A current *Income and Expense Declaration* (form FL-150).
   b. A *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a declaration that addresses the factors covered in that form.
   c. A *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.

7. ☒ OTHER ORDERS REQUESTED *(specify):* ☒ Attachment 7.
   See attachment 7.

8. ☐ TIME FOR SERVICE / TIME UNTIL HEARING I urgently need:
   a. ☐ To serve the *Request for Order* no less than *(number):* court days before the hearing.
   b. ☐ The hearing date and service of the the *Request for Order* to be sooner.
   c. I need the order because *(specify):* ☐ Attachment 8.

9. ☒ FACTS TO SUPPORT the orders I request are listed below. The facts that I write in support and attach to this request cannot be longer than 10 pages, unless the court gives me permission. ☐ Attachment 9.

   Please see the accompanying Declaration of J.R. Howell, Esq., and Memorandum of Points and Authorities attached hereto.

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date: May 30, 2025

J.R. Howell (SBN 268086)
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT)

Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

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ATTACHMENT 7

As set forth below, Respondent, Sofiya Goldshteyn, respectfully requests that the Court make the following findings and orders in connection with her Motion to Compel Further Responses:

1. Overrule Petitioner's General Objections to Form Interrogatory 17.1.
2. Overrule Petitioner's other objections to Form Interrogatory 17.1 and Order Petitioner to respond without objection to Form Interrogatory 17.1.
3. Overrule Petitioner's General Objections to the Request for Admissions.
4. Issue an order deeming admitted Request for Admissions Nos. Nos. 6-18, 20, 22, and 23; or, alternatively, order Petitioner to respond without objection.
5. Find that Petitioner's conduct has increased the cost of litigation and frustrated the policy of the law to encourage settlement in that Petitioner is continuing to deprive Respondent with information essential to understanding his claims to reimbursement, separate property contentions, justification for his claimed date of separation, and relevant to the disputed marital standard of living.
6. Order Petitioner to pay sanctions pursuant to the Civil Discovery Act and Family Code § 271 in the amount of $15,509.78.
7. Admit and receive into evidence this Request for Order and its accompany Memorandum of Points and Authorities in Support, Declaration of J.R. Howell, and related exhibits.

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

LAW OFFICE OF J.R.HOWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **POINTS AND AUTHORITIES IN SUPPORT OF REQUEST FOR ORDER TO COMPEL FURTHER RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSIONS AND INTERROGATORIES**

POINTS AND AUTHORITIES IN SUPPORT

I. INTRODUCTION

This discovery motion arises from a high-net-worth marital dissolution proceeding in which Respondent Sofiya A. Goldshteyn ("Sofiya" or "Respondent") seeks to uncover financial information essential to her claims regarding the disputed date of separation, the disputed marital standard of living, Petitioner's separate property contentions, his clams to reimbursement, and Sofiya's claims to breach of fiduciary duty, breach of trust, and damages stemming from Petitioner's ATRO violations.

After nearly three years of litigation and multiple attempts at resolution—including mediation and private judging—the parties remain at an impasse, and Petitioner Max D. Borenstein continues to obstruct legitimate discovery efforts. The present motion seeks judicial intervention to compel complete, verified responses to targeted discovery requests that go to the heart of the parties' community property claims and Petitioner's alleged concealment and dissipation of marital assets. Petitioner has served objections that are boilerplate, unsupported by law, and indicative of a bad-faith strategy to delay and frustrate discovery. This motion is not only necessary—it is urgent to ensure that Respondent is afforded meaningful access to the evidence she needs to prepare her case.

Discovery requests, meeting and conferring, and informal requests seeking voluntary production of information failed to produce an adequate response from Petitioner. As set forth in the attached Separate Statement, Respondent seeks an order compelling responses to the following discovery requests:

- Form Interrogatory No. 17.1

Additionally, Respondent seeks an order deeming the following requests for admission admitted or, alternatively, compelling responses without objection to the following:

- Request for Admission Nos. Nos. 6-18, 20, and 22.

The instant Request for Order is necessary and proper.

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II. THE COURT IS AUTHORIZED TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS PER CCP § 2033.290

Respondent seeks an Order deeming admitted or, alternatively, compelling further responses to his Responses to Request for Admission Nos. Nos. 6-18, 20, and 22.

The California Code of Civil Procedure ("CCP") states, in pertinent part:

> On receipt of a response to requests for admissions, the party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) An answer to a particular request is evasive or incomplete. (2) An objection to a particular request is without merit or too general.

CCP §2033.290(a).

As discussed below and in Respondent's Separate Statement filed herewith, Petitioner served incomplete, inadequate responses with frivolous objections. Accordingly, the Court is authorized to compel further responses for the reasons stated below.

- Improper General Objections: Petitioner improperly set forth a "General Objections" section to his responses to the Requests for Admission and cloaked every response by incorporating these general objections by reference therein.

General objections, by definition, are "too general" to be properly made. California Code of Civil Procedure ("CCP") § 2033.290(a)(2). Even though several Requests may be objectionable on the same ground they, may not be objected to as a group. *Hogan and Weber*, California Civil Discovery (2d. ed 2009) § 518. Respondent seeks an order overruling the general objections and issuing sanctions for the improper use.

- Improper Assertion of Vagueness: Petitioner objected to many of the Requests on the basis of vagueness, yet failed to identify a single word that he asserted was "vague" in any of the Requests.

As a matter of law, this objection fails: "vague" is not a valid objection to a discovery request unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430 (requests for admissions), and *Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing

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expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that he asserted was "vague" in the Requests.

As drafted, Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process. The objections should be overruled and a sanction imposed.

- Improper Assertion of Improper Form: Petitioner objected to many of the Requests on the basis of improper form.

Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As the Requests at issue do not contain subparts, and are not compound, conjunctive, or disjunctive request, the Requests are proper and the objection must be overruled.

- Improper Assertion of Calls for a Legal Conclusion: Petitioner objected to many of the Requests on the grounds that they call for a legal conclusion.

Petitioner cannot simply state that a Request calls for a legal conclusion in order to avoid answering the Request. A request for admission may also require an application of law to fact. *See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409. "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue." *Cembrook v. Superior Court of City and County of San Francisco*, *supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303. Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. *Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.

- Improper Assertion of Calls for Speculation: Petitioner objected to more than one of the Requests on the grounds that the Request was speculative.

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Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to a Request for Admissions. In addition, Petitioner failed to identify which part of the Request he asserted called for speculation.

- Improper Assertion of Unintelligible: Petitioner objected to one of the Requests on the grounds that the Request was unintelligible.

As a matter of law, the objection fails: *See Standon Co. v. Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

- Improper Assertion of Psychotherapist-Patient Privilege: Petitioner objected to at least one of the Requests on the grounds that the Request that the information sought is confidential due to the Psychotherapist-Patient Privilege.

Pursuant to Cal. Evid. Code § 1014, the psychotherapist patient-privilege applies to confidential communications between a patient and the patient's psychotherapist. Petitioner's personal journal entries do not qualify as a confidential communication between patient and psychotherapist. *See* Cal. Evid. Code § 1012.

Respondent respectfully requests that this Honorable Court overrule these objections and impose an appropriate section per CCP § 2033.290. Sanctions against Respondent for fees and costs are appropriate if for no other reason that Petitioner's improper use of general objections to avoid answering Respondent's Requests for Admissions.

III. THE COURT IS AUTHORIZED TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORY NO. 17.1 PER CCP § 2030.300

Respondent seeks an order compelling Petitioner to respond to Form Interrogatory No. 17.1.

The California Code of Civil Procedure ("CCP") states, in pertinent part:

> On receipt of a response to interrogatories, the propounding party may move for an order compelling a further response if the propounding party deems that any of the following apply: (1) An answer to a particular interrogatory is evasive or incomplete; (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate; (3) An objection to an interrogatory is without merit or too general.

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CCP §2030.300(a).

As discussed below and in Respondent's Separate Statement filed herewith, Petitioner served incomplete, inadequate responses with frivolous objections to Respondent's Form Interrogatories, namely Form Interrogatory No. 17.1. Accordingly, the Court is authorized to compel further responses for the reasons stated below.

Improper General Objections: General objections, by definition, are "too general" to be properly made. California Code of Civil Procedure ("CCP") § 2030.300(a)(3). Even though several Requests may be objectionable on the same ground they, may not be objected to as a group. *Hogan and Weber*, California Civil Discovery (2d. ed 2009) § 518.

- Failure to Produce a Privilege Log: Petitioner objected to Form Interrogatory No. 17.1, in part, on the basis of the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges, but failed to produce a Privilege Log along with the written responses.

The failure to produce a Privilege Log under these circumstances is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court* (2015) 242 Cal.App.4th 1116, 1130; *see also People ex rel. Lockyer v. Superior Court* (2004) 122 Cal.App.4th 1060, 1073-1074.

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.* (1997) 59 Cal.App.4th 110, 130. If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court* (1998) 66 Cal.App.4th 1217, 1228.

Petitioner has failed to produce any document resembling a privilege log. That may be because Petitioner raised privileges as objections, but actually does not have any documents

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protected by privileges. As such, the privilege objections should be overruled and a sanction entered for raising the objection in bad faith and refusing to withdraw it.

- Improper Assertion of Vagueness: Petitioner objected to Form Interrogatory No. 17.1 on the basis of vagueness, but failed to identify a single word that he asserted was "vague."

As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430 (requests for admissions), and *Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 901(an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). As drafted, Petitioner's rote assertions of vagueness and ambiguity are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

- Improper Assertion of Burdensome and Harassing: Petitioner objected to Form Interrogatory No. 17.1 on the basis that the request itself was burdensome and harassing.

The objection fails as a matter of law. The objections of "undue burden" and oppression are both meritless and frivolous. There is a "burden" inherent in the discovery process in all lawsuits, and a general "objection" of burden is insufficient to deny a requesting party's rights under the Civil Discovery Act. *West Pico Furniture Co.* v. *Superior Court* (1961) 56 Cal.App.2d 418. Deponent confuses burden with effort.

As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in connection with discovery requests, responding counsel should:

> Avoid raising the "burdensome and oppressive" objection unless the facts are *truly unusual* (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, *state the reasons* for your objection. [Italics in original.]

Id.

The statutory test for a protective order on the basis of "burden" is set forth in CCP § 2017(c):

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> The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery ***clearly outweighs*** the likelihood that the information sought will lead to the discovery of admissible evidence.

Id. (emphasis added).

The California Supreme Court has held that before a trial court may restrict a discovery method for being unduly burdensome, there must be evidence in the record to sustain that conclusion. Indeed, there must be evidence specifically quantifying the burden imposed on the responding party. *West Pico Furniture Co.* v. *Superior Court,* 56 Cal.App.2d 418, 418-419; *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 428.

Here, Petitioner's written response does not identify any type of burden and makes no effort to specify the same. The objections should be overruled.

- Improper Assertion of Calls for Speculation: Petitioner objected to Form Interrogatory No. 17.1 on the grounds that the it calls for speculation.

Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory calls for speculation.

- Improper Assertion of Calls for Legal Conclusion: Petitioner objected to Form Interrogatory No. 17.1 on the grounds that it calls for legal conclusions.

Petitioner cannot simply state that an Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' *i.e.*, enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (*Singer v. Superior Court* (1960) 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; *Universal Underwriters Ins. Co. v. Superior Court* (1967) 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) "[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the

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courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty*. (1969) 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

- Improper Assertion of Improper Form: Petitioner objected to Form Interrogatory No. 17.1 on the grounds that it constitutes improper form.

This is a court-approved form interrogatory. Petitioner's objection as to improper form is inappropriate and entirely unsupported by the case law.

- Improper Assertion of Unintelligible. Petitioner objected to Form Interrogatory No. 17.1 on the grounds that the Interrogatory is unintelligible.

As a matter of law, the objection fails: *See Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

- Improper Assertion of Psychotherapist-Patient Privilege: Petitioner objected to Form Interrogatory No. 17.1 on the grounds that the Interrogatory that the information sought is confidential due to the Psychotherapist-Patient Privilege.

Pursuant to Cal. Evid. Code § 1014, the psychotherapist patient-privilege applies to confidential communications between a patient and the patient's psychotherapist. Petitioner's personal journal entries do not qualify as a confidential communication between patient and psychotherapist. See Cal. Evid. Code § 1012.

Respondent respectfully requests that this Honorable Court overrule these objections and impose an appropriate section per CCP § 2030.300. Sanctions against Petitioner for fees and costs are appropriate.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Honorable Court enter an order overruling Petitioner's objections, compelling Petitioner to provide full, complete, verified further responses without objections to Respondent's Request for Admissions Nos. 6-18,

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20 and 22; and Form Interrogatory No. 17.1. Respondent further respectfully requests an Order requiring Petitioner to pay to Respondent $15,509.78 for the costs and fees incurred for the issues related to Petitioner's Response to Respondent's Request for Admissions and Interrogatories and Petitioner's clear misuse of the discovery process per CCP §§ 2030.300 and 2033.290 and Family Code § 271.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: May 30, 2025 By: _____

J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

LAW OFFICE OF J.R.HOWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **DECLARATION OF J.R. HOWELL IN SUPPORT OF RESPONDENT'S MOTION TO COMPEL FURTHER RESPONSES**

I, J.R. Howell, hereby declare and state:

1. I am an attorney duly licensed to practice law before all the courts of the State of California. Together with my co-counsel, Anne Grover, Esq. and Jason Koch, Esq., I represent Respondent Sofiya A. Goldshteyn (hereinafter "Respondent" or "Sofiya") in the above-captioned

action. Unless otherwise stated, I have personal knowledge of the matters stated herein, and if asked to testify thereto, I would do so competently.

2. This declaration is submitted in support of Sofiya's Request for Order to Compel Further Responses from Petitioner Max Borenstein to Respondent's Form Interrogatory No. 17.1; and Requests for Admission Nos. 6-18, 20, and 22; and sanctions.

BACKGROUND

3. The matter before this Honorable Court is an extremely high net worth divorce involving two individuals in the entertainment industry. The matters in dispute include the date of separation, the marital standard of living, the disposition of unimplanted embryos, Petitioner's separate property contentions, the rights of the parties as to valuable disputed royalties, residuals, contract rights, and intellectual property, and claims to breaches of trust and breaches of fiduciary duty.

4. During marriage, Petitioner was the spouse who managed nearly all of the parties' financial affairs and did so, in part, through an array of managers, bankers, and accountants, all of whom work for Petitioner.

5. The non-managing spouse, Sofiya has had little knowledge of the accounts that comprise the estate, for which there are millions of dollars of royalty income and income from contracts in dispute.

6. The record in this case consists of more than 10,000 pages of documents after nearly three years of dissolution proceedings and allegations that Petitioner is concealing substantial assets and dissipating community funds.

7. Sofiya's Request for Admissions and her Form Interrogatory are relevant to her efforts to discover the extent of the community estate and her potential claims to reimbursement from Petitioner for wasteful spending, breaches of fiduciary duty, and breaches of trust, among other claims for which the information sought by Sofiya's Request for Admissions and Form Interrogatory is essential.

8. **The Meet and Confer Process**. On April 15, 2025, Petitioner served his responses to Form Interrogatory No. 17 and the Requests for Admission at issue.

9. The parties discussed some of these issues in person on April 30, 2025, and again via telephone on May 16, 2025. Prior to May 16, 2025, counsel for Respondent attempted to schedule a meet and confer several times, but counsel for Petitioner was non-responsive or

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evasive. The telephonic meet and confer on May 16th failed to result in any substantive changes in Petitioner's positions.

BASES FOR MOTION TO COMPEL FURTHER RESPONSES

10. **Improper "General Objections."** Petitioner's responses assert boilerplate General Objections incorporated into each response and asserted as a basis for withholding otherwise relevant responsive documents.

11. **Objections made in bad faith.** Petitioner's specific objections in response to each request is a set of boilerplate, rote objections identical to one another.

12. **Failure to Produce a Privilege Log**. Petitioner is withholding responsive information on the basis of various privileges but is refusing to produce a privilege log.

13. **Prejudice**. Respondent is prejudiced by an increase in costs in her ongoing efforts to discover the extent of the estate that is being hidden from her and access to basic records that form the basis of Petitioner's separate property contentions. Further responses are necessary in order to proceed with discovery and effectively prepare for settlement negotiations and for trial.

14. **Sanctions**. Respondent requests monetary sanctions in connection with the preparation of this motion. Counsel's hourly rates and task descriptions are set forth below. Counsel's time is measured in six minute increments. Where more than one attorney or paralegal were a part of a teleconference or meeting, only one of them is listed below. Sofiya's counsel have expended the following time, incurred the following costs, and where indicated, anticipate spending the following hours:

Biller ID	Task Description	Hours	Rate	Total
Grover - Attorney	Review Petitioner's 4/15 discovery responses.	1	465	465
Grover - Attorney	Teleconferences with Howell, Koch, Appel to discuss the Motiions to Compel and discovery deficiency issues.	1	465	465
Grover - Attorney	Meet and confer in person with OPC to discuss discovery issues.	0.1	465	46.5
Grover - Attorney	Teleconference with co-counsel (5/7)	1	465	465
Grover - Attorney	Rv emails from opc, attachments, emails with Howell and Koch, rv motion to compel (5/12)	0.8	465	372
Grover - Attorney	Rv motion to compel (5/16)	0.2	465	93
Grover - Attorney	Teleconference with Howell and Koch, email to OPC, follow-up on outstanding documents and confer with Williams (5/22)	1	465	465

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Grover - Attorney	Rv emails from Howell and OPC and attachment (5/27)		465	0
Grover - Attorney	Rv reports and mtns (.3); zoom with JRH and MA (.9) (5/29)	1.2	465	558
Grover - Attorney	Rv and revise separate statement (1.2); conferences with Appel re same (.2); rev and revise points and authorities (1); emails with Howell, Koch, and Appel re action items and in follow-up (5/30)	2.6	465	1209
Koch - Attorney	Meet and confer with OPC to discuss discovery issues.	0.25	400	100
Williams - Paralegal	Staff meeting re discovery (5/27)	0.4	170	68
Williams - Paralegal	Draft document re discovery deficiencies (5/27)	0.5	170	85
Williams - Paralegal	Draft document re discovery deficiencies (5/28)	0.5	170	85
Appel - Attorney	Draft separate statement re RADM and ANSIs and talk to Howell and write email to co-counsel and read email from co-counsel (5/28)	3.9	400	1560
Appel - Attorney	Edit separate statement re RADM and draft separate statement re ANSIs and draft points of authorities (5/29)	3.3	400	1320
Howell - Attorney	Draft and review declaration in support; review Points and Authorities, separate statement, and prepare for filing. (5/30)	2	850	1700
			TOTAL	**$9056.5**

15. I anticipate that I will spend approximately 0.5 hours reviewing Max's opposition, 1 hour preparing a reply, 6 hours preparing for and attending the hearing, for a total of $6,375.00 in anticipated expenses.

16. The filing fee is $78.28 to file the instant RFO and the related e-filing fees.

17. The total sanctions request is $15,509.78.

18. Attached hereto as **Exhibit A** is a true and correct copy of Respondent's Form Interrogatories.

19. Attached hereto as **Exhibit B** is a true and correct copy of Respondent's Requests for Admission.

20. Attached hereto as **Exhibit C** is a true and correct copy of Petitioner's Responses to the Form Interrogatories.

21. Attached hereto as **Exhibit D** is a true and correct copy of Petitioner's Responses to the Requests for Admission.

/ /

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

Executed this May 30, 2025

J.R. Howell (State Bar No. 268086)

LAW OFFICE OF J.R.HOWELL

EXHIBIT

A

ATTORNEY OR PARTY WITHOUT ATTORNEY
STATE BAR NUMBER: 268086
NAME: J.R. Howell
FIRM NAME: The Law Office of J.R. Howell
STREET ADDRESS: 2219 Main Street, Suite 436
CITY: Santa Monica
STATE: CA ZIP CODE: 90405
TELEPHONE NO.: (323) 897-8656
FAX NO.:
EMAIL ADDRESS: jr@lawofficejrhowell.com
ATTORNEY FOR *(name)*: Sofiya Goldshteyn, Respondent

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

SHORT TITLE OF CASE:
Borenstein v. Goldshteyn

FORM INTERROGATORIES—GENERAL

Asking Party: Respondent, Sofiya Goldshteyn

Answering Party: Petitioner, Max Borenstein

Set No.: Three

CASE NUMBER:
22STFL08826

Sec. 1. Instructions to All Parties

(a) Interrogatories are written questions prepared by a party to an action that are sent to any other party in the action to be answered under oath. The interrogatories below are form interrogatories approved for use in civil cases.

(b) For time limitations, requirements for service on other parties, and other details, see Code of Civil Procedure sections 2030.010–2030.410 and the cases construing those sections.

(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.

Sec. 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use by parties in unlimited civil cases where the amount demanded exceeds $35,000. Separate interrogatories, *Form Interrogatories—Limited Civil Cases (Economic Litigation)* (form DISC-004), which have no subparts, are designed for use in limited civil cases where the amount demanded is $35,000 or less; however, those interrogatories may also be used in unlimited civil cases.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of **INCIDENT** in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions–Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

Sec. 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) As a general rule, 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 who 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, including the information possessed by your attorneys or agents, permits. 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 to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(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)*

Sec. 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) *(Check one of the following):*

☐ (1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

☐ **(2) INCIDENT** means *(insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)"):*

(b) YOU OR ANYONE ACTING ON YOUR BEHALF includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, limited liability company, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostats, photographs, electronically stored information, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Sec. 5. Interrogatories

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

CONTENTS

1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information—Individual
3.0 General Background Information—Business Entity
4.0 Insurance
5.0 *[Reserved]*
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
8.0 Loss of Income or Earning Capacity
9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation—General
13.0 Investigation—Surveillance
14.0 Statutory or Regulatory Violations
15.0 Denials and Special or Affirmative Defenses
16.0 Defendant's Contentions Personal Injury
17.0 Responses to Request for Admissions
18.0 *[Reserved]*
19.0 *[Reserved]*
20.0 How the Incident Occurred—Motor Vehicle
25.0 *[Reserved]*
30.0 *[Reserved]*
40.0 *[Reserved]*
50.0 Contract
60.0 *[Reserved]*
70.0 Unlawful Detainer *[See separate form DISC-003]*
101.0 Economic Litigation *[See separate form DISC-004]*
200.0 Employment Law *[See separate form DISC-002]* Family Law *[See separate form FL-145]*

1.0 Identity of Persons Answering These Interrogatories

☒ 1.1 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.)*

2.0 General Background Information individual—

☐ 2.1 State:
(a) your name;
(b) every name you have used in the past; and
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 At the time of the **INCIDENT,** did you have a driver's license? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.4 At the time of the **INCIDENT,** did you have any other permit or license for the operation of a motor vehicle? If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance; and
(d) all restrictions.

☐ 2.5 State:
(a) your present residence **ADDRESS;**
(b) your residence **ADDRESSES** for the past five years; and
(c) the dates you lived at each **ADDRESS.**

☐ 2.6 State:
(a) the name, **ADDRESS,** and telephone number of your present employer or place of self-employment; and
(b) the name, **ADDRESS,** dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

☐ 2.7 State:
(a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended, beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed; and
(d) the degrees received.

☐ 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
(a) the city and state where you were convicted;
(b) the date of conviction;
(c) the offense; and
(d) the court and case number.

☐ 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?

☐ 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?

☐ 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON?** If so, state:
(a) the name, **ADDRESS,** and telephone number of that **PERSON;** and
(b) a description of your duties.

☐ 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT?** If so, for each person state:
(a) the name, **ADDRESS,** and telephone number;
(b) the nature of the disability or condition; and
(c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT.**

☐ 2.13 Within 24 hours before the **INCIDENT** did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
(a) the name, **ADDRESS,** and telephone number;
(b) the nature or description of each substance;
(c) the quantity of each substance used or taken;
(d) the date and time of day when each substance was used or taken;
(e) the **ADDRESS** where each substance was used or taken;
(f) the name, **ADDRESS,** and telephone number of each person who was present when each substance was used or taken; and
(g) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** who prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information—Business Entity

☐ 3.1 Are you a corporation? If so, state:
(a) the name stated in the current articles of incorporation;
(b) all other names used by the corporation during the past 10 years and the dates each was used;
(c) the date and place of incorporation;
(d) the **ADDRESS** of the principal place of business; and
(e) whether you are qualified to do business in California.

☐ 3.2 Are you a partnership? If so, state:
(a) the current partnership name;
(b) all other names used by the partnership during the past 10 years and the dates each 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.

☐ 3.3 Are you a limited liability company? If so, state:
(a) the name stated in the current articles of organization;
(b) all other names used by the company during the past 10 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; and
(e) whether you are qualified to do business in California.

☐ 3.4 Are you a joint venture? If so, state:
(a) the current joint venture name;
(b) all other names used by the joint venture during the past 10 years and the dates each was used;
(c) the name and **ADDRESS** of each joint venturer; and
(d) the **ADDRESS** of the principal place of business.

☐ 3.5 Are you an unincorporated association? If so, state:
(a) the current unincorporated association name;
(b) all other names used by the unincorporated association during the past 10 years and the dates each was used; and
(c) the **ADDRESS** of the principal place of business.

☐ 3.6 Have you done business under a fictitious name during the past 10 years? If so, for each fictitious name state:
(a) the name;
(b) the dates each was used;
(c) the state and county of each fictitious name filing; and
(d) the **ADDRESS** of the principal place of business.

☐ 3.7 Within the past five years has any public entity registered or licensed your business? If so, for each license or registration:
(a) identify the license or registration;
(b) state the name of the public entity; and
(c) state the dates of issuance and expiration.

4.0 Insurance

☐ 4.1 At the time of the **INCIDENT,** was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT?** If so, for each policy state:
(a) the kind of coverage;
(b) the name and **ADDRESS** of the insurance company;
(c) the name, **ADDRESS,** and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company; and
(g) the name, **ADDRESS,** and telephone number of the custodian of the policy.

☐ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT?** If so, specify the statute.

5.0 *[Reserved]*

6.0 Physical, Mental, or Emotional Injuries

☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT?** *(If your answer is "no," do not answer interrogatories 6.2 through 6.7).*

☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT?** If so, for each complaint state:

(a) a description;

(b) whether the complaint is subsiding, remaining the same, or becoming worse; and

(c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT?** If so, for each **HEALTH CARE PROVIDER** state:

(a) the name, **ADDRESS,** and telephone number;

(b) the type of consultation, examination, or treatment provided;

(c) the dates you received consultation, examination, or treatment; and

(d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT?** If so, for each medication state:

(a) the name;

(b) the **PERSON** who prescribed or furnished it;

(c) the date it was prescribed or furnished;

(d) the dates you began and stopped taking it; and

(e) the cost to date.

☐ **6.6** Are there any other medical services necessitated by the injuries that you attribute to the **INCIDENT** that were not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:

(a) the nature;

(b) the date;

(c) the cost; and

(d) the name, **ADDRESS,** and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT?** If so, for each injury state:

(a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER;**

(b) the complaints for which the treatment was advised; and

(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:

(a) describe the property;

(b) describe the nature and location of the damage to the property;

(c) state the amount of damage you are claiming for each item of property and how the amount was calculated; and

(d) if the property was sold, state the name, **ADDRESS,** and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? 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; and

(c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:

(a) the date repaired;

(b) a description of the repair;

(c) the repair cost;

(d) the name, **ADDRESS,** and telephone number of the **PERSON** who repaired it; and

(e) the name, **ADDRESS,** and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? *(If your answer is "no," do not answer interrogatories 8.2 through 8.8).*

☐ 8.2 State:

(a) the nature of your work;

(b) your job title at the time of the **INCIDENT;** and

(c) the date your employment began.

☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT.**

☐ 8.6 State the dates you did not work and for which you lost income as a result of the **INCIDENT.**

☐ 8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

☐ 8.8 Will you lose income in the future as a result of the **INCIDENT?** If so, state:

(a) the facts on which you base this contention;

(b) an estimate of the amount;

(c) an estimate of how long you will be unable to work; and

(d) how the claim for future income is calculated.

9.0 Other Damages

☐ 9.1 Are there any other damages that you attribute to the **INCIDENT?** 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** to whom an obligation was incurred.

☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, describe each document and state the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

10.0 Medical History

☐ 10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT?** If so, for each state:

(a) a description of the complaint or injury;

(b) the dates it began and ended; and

(c) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT.** *(You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT.**)*

☐ 10.3 At any time after the **INCIDENT,** did you sustain injuries of the kind for which you are now claiming damages? If so, for each incident giving rise to an injury state:

(a) the date and the place it occurred;

(b) the name, **ADDRESS,** and telephone number of any other **PERSON** involved;

(c) the nature of any injuries you sustained;

(d) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER** who you consulted or who examined or treated you; and

(e) the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

☐ 11.1 Except for this action, in the past 10 years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:

(a) the date, time, and place and location (closest street **ADDRESS** or intersection) of the **INCIDENT** giving rise to the action, claim, or demand;

(b) the name, **ADDRESS,** and telephone number of each **PERSON** against whom the claim or demand was made or the action filed;

(c) the court, names of the parties, and case number of any action filed;

(d) the name, **ADDRESS,** and telephone number of any attorney representing you;

(e) whether the claim or action has been resolved or is pending; and

(f) a description of the injury.

☐ 11.2 In the past 10 years have you made a written claim or demand for workers' compensation benefits? If so, for each claim or demand state:

(a) the date, time, and place of the **INCIDENT** giving rise to the claim;

(b) the name, **ADDRESS,** and telephone number of your employer at the time of the injury;

(c) the name, **ADDRESS,** and telephone number of the workers' compensation insurer and the claim number;

(d) the period of time during which you received workers' compensation benefits;

(e) a description of the injury;

(f) the name, **ADDRESS,** and telephone number of any **HEALTH CARE PROVIDER** who provided services; and

(g) the case number at the Workers' Compensation Appeals Board.

12.0 Investigation—General

☐ 12.1 State the name, **ADDRESS,** and telephone number of each individual:

(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT;**

(b) who made any statement at the scene of the **INCIDENT;**

(c) who heard any statements made about the **INCIDENT** by any individual at the scene; and

(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

☐ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT?** If so, for each individual state:

(a) the name, **ADDRESS,** and telephone number of the individual interviewed;

(b) the date of the interview; and

(c) the name, **ADDRESS,** and telephone number of the **PERSON** who conducted the interview.

☐ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT?** If so, for each statement state:

(a) the name, **ADDRESS,** and telephone number of the individual from whom the statement was obtained;

(b) the name, **ADDRESS,** and telephone number of the individual who obtained the statement;

(c) the date the statement was obtained; and

(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original statement or a copy.

☐ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries? If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

(c) the date the photographs, films, or videotapes were taken;

(d) the name, **ADDRESS,** and telephone number of the individual taking the photographs, films, or videotapes; and

(e) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy of the photographs, films, or videotapes.

☐ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310) concerning the **INCIDENT?** If so, for each item state:

(a) the type (i.e., diagram, reproduction, or model);

(b) the subject matter; and

(c) the name, **ADDRESS,** and telephone number of each **PERSON** who has it.

☐ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT?** If so, state:

(a) the name, title, identification number, 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 the original or a copy of the report.

☐ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT?** If so, for each inspection state:

(a) the name, **ADDRESS,** and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310); and

(b) the date of the inspection.

13.0 Investigation—Surveillance

☐ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action? If so, for each surveillance state:

(a) the name, **ADDRESS,** and telephone number of the individual or party;

(b) the time, date, and place of the surveillance;

(c) the name, **ADDRESS,** and telephone number of the individual who conducted the surveillance; and

(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy of any surveillance photograph, film, or videotape.

☐ 13.2 Has a written report been prepared on the surveillance? If so, for each written report state:

(a) the title;

(b) the date;

(c) the name, **ADDRESS,** and telephone number of the individual who prepared the report; and

(d) the name, **ADDRESS,** and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT?** If so, identify the name, **ADDRESS,** and telephone number of each **PERSON** and the statute, ordinance, or regulation that was violated.

☐ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT?** If so, for each **PERSON** state:

(a) the name, **ADDRESS,** and telephone number of the **PERSON;**

(b) the statute, ordinance, or regulation allegedly violated;

(c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered; and

(d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Denials and Special or Affirmative Defenses

☐ 15.1 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.**

16.0 Defendant's Contentions—Personal Injury

☐ 16.1 Do you contend that any **PERSON,** other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff? If so, for each **PERSON:**

(a) state the name, **ADDRESS,** and telephone number of the **PERSON;**

(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.

☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT?** 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.

☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**? If so, for each injury:
(a) identify it;
(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.

☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**? If so:
(a) identify each service;
(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.

☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were not necessary or unreasonable? If so:
(a) identify each cost;
(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.

☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
(a) identify each part of the loss;
(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.

☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery Proceedings thus far in this case was not caused by the **INCIDENT**? 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.

☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were 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.

☐ 16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
(a) the source of each **DOCUMENT;**
(b) the date each claim arose;
(c) the nature of each claim; and
(d) the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure sections 2034.210–2034.310)? If so, for each plaintiff state:
(a) the name, **ADDRESS,** and telephone number of each **HEALTH CARE PROVIDER;**
(b) a description of each **DOCUMENT**; and
(c) the name, **ADDRESS,** and telephone number of the **PERSON** who has each **DOCUMENT.**

17.0 Responses to Request for Admissions

☒ 17.1 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.

18.0 *[Reserved]*

19.0 *[Reserved]*

20.0 How the Incident Occurred—Motor Vehicle

☐ 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).

☐ 20.2 For each vehicle involved in the **INCIDENT,** state:
(a) the year, make, model, and license number;
(b) the name, ADDRESS, and telephone number of the driver;

(c) the name, **ADDRESS,** and telephone number of each occupant other than the driver;

(d) the name, **ADDRESS,** and telephone number of each registered owner;

(e) the name, **ADDRESS,** and telephone number of each lessee;

(f) the name, **ADDRESS,** and telephone number of each owner other than the registered owner or lien holder; and

(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT,** and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT.**

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT.**

☐ 20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT?** If so, state:

(a) your location when you first saw it;

(b) the color;

(c) the number of seconds it had been that color; and

(d) whether the color changed between the time you first saw it and the **INCIDENT.**

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:

(a) just before the **INCIDENT;**

(b) at the time of the **INCIDENT;** and

(c) just after the **INCIDENT.**

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:

(a) identify the vehicle;

(b) identify each malfunction or defect;

(c) state the name, **ADDRESS,** and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and

(d) state the name, **ADDRESS,** and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT?** If so:

(a) identify the vehicle;

(b) identify each malfunction or defect;

(c) state the name, **ADDRESS,** and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect; and

(d) state the name, **ADDRESS,** and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.11 State the name, **ADDRESS,** and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT.**

25.0 *[Reserved]*

30.0 *[Reserved]*

40.0 *[Reserved]*

50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:

(a) identify each **DOCUMENT** that is part of the agreement and for each state the name, **ADDRESS,** and telephone number of each **PERSON** who has the **DOCUMENT;**

(b) state each part of the agreement not in writing, 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) state each modification not in writing, the date, and the name, **ADDRESS,** and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;

(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 each **PERSON** who has the **DOCUMENT.**

☐ 50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

☐ 50.4 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 termination, and the basis of the termination.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 *[Reserved]*

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form Save this form Clear this form

EXHIBIT

B

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **REQUESTS FOR ADMISSION, SET ONE, TO PETITIONER MAX D. BORENSTEIN** TRIAL SETTING CONFERENCE: Date: July 7, 2025 Time: 8:30AM Place: Dept. 2B

PROPOUNDING PARTY: Respondent, Sofiya A. Goldshteyn

RESPONDING PARTY: Petitioner, Max D. Borenstein

SET NO.: One

In accordance with the provisions of Section 2033.030 of the Code of Civil Procedure, Respondent Sofiya A. Goldshteyn ("Respondent") propounds to Petitioner Max D. Borenstein ("Responding Party") these Requests for Admission, Set One, as follows:

REQUESTS FOR ADMISSION OF FACT

REQUEST NO. 1:

Admit that the Parties' date of separation [*"Date of separation" has that meaning as defined in Cal. Fam. Code § 70*] is August 23, 2022.

REQUEST NO. 2:

Admit that no Family Code § 2640 reimbursements are due to you.

REQUEST NO. 3:

Admit that you have no separate property claims, including without limitation to claims to payments from agreements related to the TV series *Minority Report*; *Winning Time: Rise of the Lakers Dynasty*; and any and all payments received as a result of the Payment Guarantee clause in the 2022 Overall Term Agreement between Steeplechase Amusements, Inc., and HBO.

REQUEST NO. 4:

Admit that during the marriage, the Marital Standard of Living included monthly expenditures exceeding $150,000, a primary residence and a beach house each valued over $3,000,000, an income-generating investment property with value exceeding $1,000,000 generating rental income of at least $4,000 per month, annual vacations costing over $50,000, and savings, investments, and retirement contributions exceeding $1,000,000 annually.

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REQUEST NO. 5:

Admit that the Marital Standard of Living applicable in this matter included a registered investment advisor compensated with community funds, a financial planner compensated with community funds, an accountant compensated with community funds, health insurance paid for with community funds, medical care paid for with community funds, maintenance on 3 homes paid for with community funds including without limitation bi-weekly cleaning service, monthly gardener and landscaping, and monthly pool maintenance service.

REQUEST NO. 6:

Admit that in 2019, your combined contributions to pension plans, saving, investment, and retirement accounts, exceeded $1,000,000.00.

REQUEST NO. 7:

Admit that in 2020, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00.

REQUEST NO. 8:

Admit that in 2021, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00.

REQUEST NO. 9:

Admit that in 2022, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00.

REQUEST NO. 10:

Admit that the monthly amount you propose for spousal support to Respondent is less than the monthly amount you spent on discretionary personal expenses, including travel, luxury goods, dining, and entertainment, during the marriage.

REQUEST NO. 11:

Admit that the unimplanted embryos are Respondent's separate property.

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REQUEST NO. 12:

Admit that there are no written agreements concerning the existing unimplanted embryos.

REQUEST NO. 13:

Admit that there are no oral agreements concerning the existing unimplanted embryos.

REQUEST NO. 14:

Admit that since your date of separation, you have transferred funds from community accounts to accounts held solely in your name without prior knowledge or disclosure to Respondent.

REQUEST NO. 15:

Admit that you have made investments with community funds since separation without Respondent's consent.

REQUEST NO. 16:

Admit that you were aware of accounts containing community funds solely in your name or control on March 16, 2023, that were not held in an account in the name of the Borenstein-Goldshteyn Family Trust.

REQUEST NO. 17:

Admit that you provided no additional services under the 2022 Overall Term Agreement between Steeplechase Amusements, Inc. and HBO after your asserted date of separation.

REQUEST NO. 18:

Admit that you applied community tax refunds to your own separate tax liabilities without Respondent's consent.

REQUEST NO. 19:

Admit that you attempted to purchase real estate in your name only using community funds without Respondent's consent.

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REQUEST NO. 20:

Admit that you have not fully complied with the terms of the Temporary and Provisional Spousal Support Agreement.

REQUEST NO. 21:

Admit that Respondent is not yet self-supporting for spousal support purposes.

REQUEST NO. 22:

Admit that you have not produced any communications with any party regarding any of your claims or defenses, including your claims to credits, reimbursement, allocation, characterization, or separate property contentions (if any).

REQUEST NO. 23:

Admit that your personal journal contains entries in your handwriting describing your "obsession" for Rebecca Bertuch and your financial support of her during the marriage.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: March 14, 2025

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

EXHIBIT

C

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Attorneys for Petitioner,
Max David Borenstein

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **PETITIONER'S RESPONSES TO FORM INTERROGATORIES—GENERAL**

PROPOUNDING PARTY: RESPONDENT, SOFIYA ALEXANDRA GOLDSHTEYN

RESPONDING PARTY: PETITIONER, MAX DAVID BORENSTEIN

SET NUMBER: ONE (1)

TO RESPONDENT SOFIYA ALEXANDRA GOLDSHTEYN AND HER ATTORNEY(S) OF RECORD:

Pursuant to Code of Civil Procedure section 2030.210 et seq., Petitioner Max David Borenstein ("Max", "Petitioner", "Responding Party") provides the following written Response to Form Interrogatories—General (Set Three), with which he was electronically served on March 14, 2025 in the above-entitled marital dissolution proceeding by Respondent Sofiya Alexandra Goldshteyn ("Sofiya", "Respondent", "Propounding Party").

Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

GENERAL RESPONSE

Responding Party's discovery, investigations, and preparation for trial of this matter have not been completed as of the date of this Response. Therefore, Responding Party does not purport to state herein anything more than the information presently known to and discovered by Responding Party. Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently within Responding Party's knowledge, would be included in this Response.

Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently in Responding Party's knowledge, would be included in this Response. Responding Party specifically reserves the right, at this time, to rely on any information generated through further discovery, including that physically possessed, but not yet identified as relevant to this action. Responding Party also specifically reserves the right, at the time of trial or other hearing, to introduce evidence of any sort which may hereafter be discovered, as well as documents which may hereafter be discovered. Responding Party also specifically reserves the right to amend and/or supplement this Response. Each of the following responses is subject to all valid objections as to competence, relevance, materiality, propriety, admissibility, and any other objections on grounds that will require the exclusion of any response hereto at the time of trial. Responding Party further objects to each interrogatory to the extent that said interrogatory seeks documents concerning non-parties on the basis that such information is protected from production, is privileged pursuant to *Webb v. Standard Oil* (1957) 49 Cal.2d 508, and invades the right of privacy of such persons protected by the United States Constitution and the Constitution of the State of California. All such objections and grounds are reserved and may be interposed at the time of trial or other hearing.

Subject to the foregoing, Responding Party submits the following responses to the Form Interrogatories—General, Set Three, propounded by Propounding Party:

///

///

Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

INTERROGATORY NO. 1.1

Interrogatory:

"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.)*"

Response:

I was assisted in the preparation of my responses to these interrogatories by the Law Offices of Kaplan, Trope & Gekht (10866 Wilshire Blvd., Suite 1650, Los Angeles, CA 90024; (310) 473-0798), whom I have retained to represent me in connection with this marital dissolution proceeding.

INTERROGATORY NO 17.1

Interrogatory:

"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."

Response (Request for Admission No. 1):

Insofar as it pertains to Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Burdensome and harassing;
2. Calls for speculation;
3. Seeks documents and/or information protected by the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges;

///

4. Calls for legal conclusion; and,

5. Improper form (Code of Civil Procedure section 2033.060 (f)).

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

On April 6, 2022, after months of conflict and multiple failed attempts at marital counseling, I informed Sofiya of my intent to end our marriage. Since then, we have led separate lives; living in separate residences, ending our sexual relationship, and limiting our communication to logistical discussions about our dog Munch, our houseplants, and how to ensure we did not cross paths when travelling to and from our two Los Angeles-area homes. In the course of these communications, I remained clear and unwavering in my representations to Sofiya about my intent to end our marriage. Sofiya and I did not continue our sexual relationship or make any attempt to reconcile, nor did we continue to travel together, socialize with one another, celebrate holidays together, or otherwise maintain the appearance of being married. In the months between April 6, 2022 and August 23, 2022, Sofiya repeatedly confirmed her understanding of my decision to end our marriage and actively participated in the logistics of dividing our lives.

The persons with knowledge of these facts are: Mary Kay Cocharo (310-828-2624); Kelly White (310-213-4249); Laura Borenstein (818-613-5729; 5401 Zelzah Ave #110 Encino, CA 91316); Monique Feig (310-877-6941); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); Klavdia Goldshteyn (323-839-9960; 8505 Gulana Ave Unit 4106, Playa Del Rey, CA 90293).

The documents and other tangible things that support my response are the text messages which I have already produced (specifically, in response to Demand 42 of the Demand for Production (Set Two) propounded by Propounding Party on March 14, 2024, to which Responding Party produced responsive documents on May 6, 2024).

///

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(310) 473-0798

Response (Request for Admission No. 2):

Insofar as it pertains to Request for Admission No. 2 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 2 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question to be asking me if I believe I am due any reimbursements for my separate property used to acquire or capitally improve community property, I answer as follows: I believe I am due reimbursements for the use of my separate property income received during the marriage for work performed prior to marriage that was used to acquire community property, like the Clover residence occupied by Sofiya. The documents and facts that support this belief have already been provided to Sofiya via my forensic accountants when they provided my 2640 reimbursement schedule and the backup documents thereto, and will be supplemented by me in my forthcoming responses to Demand for Production (Set Three), propounded by Propounding Party on March 29, 2025. In addition to myself, the people who have knowledge of these facts are Eric Feig (8730 Wilshire Blvd., Suite 350, Beverly Hills, CA 90211; 424-274-3830); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); and Reichman & Associates, P.C. (6420 Wilshire Blvd., Suite 720, Los Angeles, CA 90048; 323-549-2160), whom I have retained as forensic accountants in connection with this marital dissolution proceeding.

Response (Request for Admission No. 3):

Insofar as it pertains to Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

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As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question, I am to explain what property exists that I claim to be separate, which I understand to be property acquired by me prior to marriage, after separation, or during the marriage by gift, bequest, devise or descent. Based on the foregoing understanding of the question, I respond as follows:

I was a successful writer prior to marrying Sofiya. For standalone projects, I worked on multiple projects, some of which were completed prior to marriage, some of which were commenced prior to marriage but completed during the marriage, and some of which were commenced and completed after marriage. The list of the projects and the corresponding percentages of before marriage and during marriage and after marriage work, as applicable, based on my best estimate, have already been provided to Sofiya through my forensic accountants and are currently being supplemented through my forthcoming responses to Demand for Production (Set Three), propounded by Propounding Party on March 29, 2025. For ongoing projects—like projects that require me to continually preform services not limited to just one script—the work performed after Sofiya and I separated and my compensation therefore is my separate property. Additionally, my father passed away in 2022. I inherited some personal items from him which are my separate property. Additionally, my personal furnishings whenever acquired are my separate property. There are also items of personal property, like furniture and household items, that I acquired prior to marriage that are my separate property. Finally, the contents of the home I lived in on PCH before it burned down were my separate property as they were either personal furnishings or items I acquired with my separate property earnings after Sofiya and I separated. It would be impossible to go into the level of detail called for in the question for all separate property (each kitchen utensil, each item of clothing, for example), but generally, as to intellectual property, the persons with knowledge of these facts are Kevin Falls (EP), Lindsey Springer (Executive), Alex Garcia, and Gareth Edwards. As to my services

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contracts with HBO the persons with knowledge of these facts are Jim Hecht (EP), the Cast and Crew of Winning Time, and HBO Legal. As to inherited property, the persons with knowledge of these facts are my parents.

Response (Request for Admission No. 4):

Insofar as it pertains to Request for Admission No. 4 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060 (f)).

Response (Request for Admission No. 5):

Insofar as it pertains to Request for Admission No. 5 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 6):

Insofar as it pertains to Request for Admission No. 6 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 7):

Insofar as it pertains to Request for Admission No. 7 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 8):

Insofar as it pertains to Request for Admission No. 8 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 9):

Insofar as it pertains to Request for Admission No. 9 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 10):

Insofar as it pertains to Request for Admission No. 10 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 11):

Insofar as it pertains to Request for Admission No. 11 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Response (Request for Admission No. 12):

Insofar as it pertains to Request for Admission No. 12 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Response (Request for Admission No. 13):

Insofar as it pertains to Request for Admission No. 13 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Response (Request for Admission No. 14):

Insofar as it pertains to Request for Admission No. 14 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Vague;
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

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Response (Request for Admission No. 15):

Insofar as it pertains to Request for Admission No. 15 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 16):

Insofar as it pertains to Request for Admission No. 16 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Unintelligible;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 17):

Insofar as it pertains to Request for Admission No. 17 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion;
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 18):

Insofar as it pertains to Request for Admission No. 18 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation;

2. Calls for legal conclusion; and,

3. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 19):

Insofar as it pertains to Request for Admission No. 19 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 19 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

I have never attempted to purchase real estate solely in my name without Sofiya's consent only using community property. As I do not understand how to prove a negative, this is the best I am able to answer this interrogatory at this time.

Response (Request for Admission No. 20):

Insofar as it pertains to Request for Admission No. 20 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;

2. Calls for legal conclusion.

Response (Request for Admission No. 21):

Insofar as it pertains to Request for Admission No. 21 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 21 of the Requests for Admission served by Propounding

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Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

The facts on which I base this response are set forth on Page 2 of the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1. In relevant part, said stipulation and order provides that: "Respondent shall be imputed with employment income of $7,000 per month for all purposes in this case, including pendente lite requests for orders, trial, and post-trial requests for order, if any, for all of which Respondent's imputation of employment income of $7,000 per months shall be res judicata." The documents and other tangible things that support my response are the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1.

Response (Request for Admission No. 22):

Insofar as it pertains to Request for Admission No. 22 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Response (Request for Admission No. 23):

Insofar as it pertains to Request for Admission No. 23 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Seeks documents and/or information protected by the psychotherapist-patient privilege;
3. Vague; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

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Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

DATED: 04/15/2025 BY: _____

Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

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Los Angeles, CA 90024
(310) 473-0798

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VERIFICATION

I, Max David Borenstein, declare that I am the Petitioner in this proceeding. I have reviewed the foregoing Petitioner's Responses to Form Interrogatories—General in their entirety. The Responses therein are true and correct to the best of my knowledge.

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

DATED: April 14, 2025 BY: _____
Max David Borenstein

EXHIBIT 1

Received: 6/28/2024 2:30 PM

GARRY M. GEKHT, ESQ. (SBN 321424)
DRORIT BICK RAITER, ESQ. (SBN 212321)
LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Boulevard, Suite 1250
Los Angeles, California 90024
(310) 473-0798

Attorneys for Petitioner,
MAX DAVID BORENSTEIN

Electronically FILED
Superior Court of California
County of Los Angeles
6/28/2024 3:40 PM
David W. Slayton
Executive Officer/Clerk of Court,
By A. Narayan, Deputy Clerk

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd, Suite 1250
Los Angeles, CA 90024
(310) 473-0798

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In re the Marriage of: Petitioner: MAX DAVID BORENSTEIN and Respondent: SOFIYA ALEXANDRA GOLDSHTEYN	CASE NO. 22STFL08826 [*Assigned to the Honorable Judge Nord, Dept. "2B"*] **STIPULATION AND ORDER RE SEALING RFO'S, VOCATIONAL EVALUATION RFO AND 2022 TAX RETURNS AND REFUND** **Date: June 28, 2024** **Time: 8:30 a.m.** **Dept: 2B**

WHEREAS, on September 19, 2023, the Court adopted as its order the Parties' stipulation re: 2022 Joint Income Tax Returns ("2022 Tax Stipulation"); and

WHEREAS, on April 23, 2024, Respondent, SOFIYA ALEXANDRA GOLDSHTEYN ("Respondent") filed a Request for Order for Sealing Orders ("First Sealing RFO"), which was set for hearing on June 28, 2024; and

WHEREAS, on May 22, 2024, between Petitioner, MAX DAVID BORENSTEIN ("Petitioner") filed a Request for Order for Vocational Evaluation of Respondent ("VE RFO"), which was set for hearing on July 25, 2024;

WHEREAS, on May 28, 2024, Respondent filed a Request for Order for Sealing Orders ("Second Sealing RFO"), which was set for hearing on July 18, 2024; and

WHEREAS, on June 14, 2024, Petitioner filed his Responsive Declaration and Request for Affirmative Cross Relief in the form of Family Code § 271 Sanctions; and

WHEREAS, on June 28, 2024, the Court held a chambers conference with counsel for Petitioner and Respondent and ordered the parties to meet and confer; and

WHEREAS, on June 28, 2024, the parties met and conferred, through counsel, and have reached certain agreements that they desire to become the order of the Court; NOW, THEREFORE:

IT IS HEREBY STIPULATED by and between Petitioner, MAX DAVID BORENSTEIN (hereinafter referred to as the "Petitioner") appearing personally and by and through his counsel of record, Garry M. Gekht, Esq., of the Law Offices of Kaplan & Gekht, and Respondent, SOFIYA ALEXANDRA GOLDSHTEYN (hereinafter referred to as the "Respondent"), appearing personally and by and through her co-counsel of record, J.R. Howell, Esq., for Law Office of J.R. Howell, as follows:

1. Respondent's First Sealing RFO and Second Sealing RFO shall be taken off calendar.

2. Petitioner's VE RFO shall be taken off calendar.

3. Respondent shall be imputed with employment income of $7,000 per month for all purposes in this case, including pendente lite requests for orders, trial, and post-trial requests for order, if any, for all of which Respondent's imputation of employment income of $7,000 per months shall be *res judicata*.

4. The Court hereby reserves jurisdiction on adjudicating Petitioner's request for Family Code § 271 sanctions responsive to the First Sealing RFO and as requested in his VE RFO to the time of trial or settlement.

5. On or before July 12, 2024, Respondent shall submit to Petitioner the names of two (2) Certified Public Accountants who shall prepare the parties' amended tax returns for calendar year 2022. On or before July 19, 2024, Petitioner shall select one of the two Certified Public Accountants submitted by Respondent and inform Petitioner of his selection. The parties shall

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cooperate with the selected public accountant in supplying any and all information reasonably necessary for the accountant to prepare and file the parties' amended 2022 Income Tax Returns. Upon the submission of such returns, which shall be submitted on or before September 1, 2024, Petitioner shall cause to be issued to Respondent within ten days of filing the amended returns a check or wire transfer in the amount of ½ of the Parties' 2022 Federal and California income tax refunds, as calculated on the amended 2022 tax return, and, upon so doing, Petitioner shall be awarded 100% of the parties' 2022 Federal and California income tax refunds, subject to claims of re-allocation, if any, by Respondent at a merits trial or via negotiated settlement. Respondent reserves all claims to fees, costs, sanctions, and/or any other relief related to her claims related to any alleged violation of the stipulated orders and related fiduciary duties, which Petitioner denies. Respondent's receipt of the ½ value of the parties 2022 Federal and California income tax refund is expressly without prejudice to Respondent's claims and/or contentions regarding the source of funds utilized by Petitioner for the payment of said ½ value of the parties' 2022 Federal and California income tax refund to Respondent.

6. The Court sets a Trial Setting Conference in this matter for 8:30 a.m. on August 23, 2024 in Department 2B. The parties hereby waive notice thereof.

7. Each of the Parties has entered into the herein Stipulation and Order voluntarily and free of any duress or undue influence.

8. The herein Stipulation and Order shall be effective forthwith upon signing by the Parties and their respective counsel (as applicable) and shall not depend upon its processing at Court to become effective.

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10866 Wilshire Blvd, Suite 1250
Los Angeles, CA 90024
(310) 473-0798

9. Facsimile and/or electronic signatures shall be accepted in lieu of originals, and this document can be signed in multiple parts, and each signature will be deemed an original, without all signatures necessarily having to appear on the same signature page.

IT IS SO STIPULATED:

DATED: June 28, 2024 By: Max Borenstein
Max Borenstein (Jun 28, 2024 13:31 PDT)
MAX DAVID BORENSTEIN, PETITIONER

DATED: June 28, 2024 By: Sofiya Goldshteyn (Jun 28, 2024 12:45 PDT)
SOFIYA ALEXANDRA GOLDSHTEYN, RESPONDENT

APPROVED AS TO FORM ONLY AS CONFORMING TO THE STIPULATION OF THE PARTIES:

DATED: June 28, 2024 LAW OFFICES OF KAPLAN, TROPE & GEKHT

By: _____
Garry M. Gekht, Esq.
Attorney for Petitioner,
MAX DAVID BORENSTEIN

DATED: June 28, 2024 LAW OFFICE OF J.R. HOWELL

By: J.R. Howell
J. R. Howell, Esq.
Attorney for Respondent,
SOFIYA ALEXANDRA GOLDSHTEYN

ORDER

IT IS SO ORDERED.

DATED: 06/28/2024

Scott J. Nord
JUDGE
JUDGE OF THE LOS ANGELES SUPERIOR COURT

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Los Angeles, CA 90024
(310) 473-0798

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1650, Los Angeles, California 90024.

On April 15, 2025, I served the foregoing document described as **PETITIONER'S RESPONSES TO FORM INTERROGATORIES-GENERAL, SET NO. ONE** on the interested parties in this action by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows: ☒ by attaching a digital copy of the document to the email address provided as follows:

J.R. Howell, Esq.
Law Office of J.R. Howell
1223 Wilshire Blvd.
P. O. Box 543
Santa Monica, CA 90403

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

Jason P. Koch, Esq.
The Law Office of Jason P. Koch
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

[ ] BY CAUSING TO BE PERSONALLY SERVED: I caused delivery of such envelope by hand to the offices of the addressee.

[ ] VIA OVERNIGHT DELIVERY: : I enclosed the documents in an envelope or package by an overnight delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. The envelope or package was designated for next business day delivery, with all charges billed to sender.

[XX] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the following electronic notification addresses: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com; jason@jasonkochlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 15, 2025, at Los Angeles, California.

_____
Blanca Parks

EXHIBIT

D

Garry M. Gekht, Esq. (SBN 321424)
Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798
mbore@ktg.law

Attorneys for Petitioner,
Max David Borenstein

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **PETITIONER'S RESPONSES TO REQUESTS FOR ADMISSION**

PROPOUNDING PARTY: RESPONDENT, SOFIYA ALEXANDRA GOLDSHTEYN

RESPONDING PARTY: PETITIONER, MAX DAVID BORENSTEIN

SET NUMBER: ONE (1)

TO RESPONDENT SOFIYA ALEXANDRA GOLDSHTEYN AND HER ATTORNEY(S) OF RECORD:

Pursuant to Code of Civil Procedure section 2033.210 et seq., Petitioner Max David Borenstein ("Max", "Petitioner", "Responding Party") provides the following written Response to Requests for Admission (Set One), with which he was electronically served on March 14, 2025 in the above-entitled marital dissolution proceeding by Respondent Sofiya Alexandra Goldshteyn ("Sofiya", "Respondent", "Propounding Party").

Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

Kaplan, Trope, Gekht & DeCarolis, LLP
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Los Angeles, CA 90024
(310) 473-0798

GENERAL RESPONSE

Responding Party's discovery, investigations, and preparation for trial of this matter have not been completed as of the date of this Response. Therefore, Responding Party does not purport to state herein anything more than the information presently known to and discovered by Responding Party. Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently within Responding Party's knowledge, would be included in this Response.

Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently in Responding Party's knowledge, would be included in this Response. Responding Party specifically reserves the right, at this time, to rely on any information generated through further discovery, including that physically possessed, but not yet identified as relevant to this action. Responding Party also specifically reserves the right, at the time of trial or other hearing, to introduce evidence of any sort which may hereafter be discovered, as well as documents which may hereafter be discovered. Responding Party also specifically reserves the right to amend and/or supplement this Response.

Each of the following responses is subject to all valid objections as to competence, relevance, materiality, propriety, admissibility, and any other objections on grounds that will require the exclusion of any response hereto at the time of trial. Responding Party further objects to each request to the extent that said request seeks documents concerning non-parties on the basis that such information is protected from production, is privileged pursuant to *Webb v. Standard Oil* (1957) 49 Cal.2d 508, and invades the right of privacy of such persons protected by the United States Constitution and the Constitution of the State of California. All such objections and grounds are reserved and may be interposed at the time of trial or other hearing.

Subject to the foregoing, Responding Party submits the following responses to the Requests for Admission, Set One, propounded by Propounding Party:

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Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

REQUEST NO. 1

Request:

"Admit that the Parties' date of separation [*"Date of separation" has that meaning as defined in Cal. Fam. Code § 70*] is August 23, 2022."

Response:

Responding Party **objects** to Request No. 1 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure sections 2033.060(d) and (e)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Deny.

REQUEST NO. 2

Request:

"Admit that no Family Code § 2640 reimbursements are due to you."

Response:

Responding Party **objects** to Request No. 2 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(d)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Deny.

REQUEST NO. 3

Request:

"Admit that you have no separate property claims, including without limitation to claims to payments from agreements related to the TV series *Minority Report*; *Winning Time: Rise of the Lakers Dynasty*; and any and all payments received as a result of the Payment Guarantee clause in the 2022 Overall Term Agreement between Steeplechase Amusements, Inc., and HBO."

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Response:

Responding Party **objects** to Request No. 3 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Deny.

REQUEST NO. 4

Request:

"Admit that during the marriage, the Marital Standard of Living included monthly expenditures exceeding $150,000, a primary residence and a beach house each valued over $3,000,000, an income-generating investment property with value exceeding $1,000,000 generating rental income of at least $4,000 per month, annual vacations costing over $50,000, and savings, investments, and retirement contributions exceeding $1,000,000 annually."

Response:

Responding Party **objects** to Request No. 4 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060 (f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 5

Request:

"Admit that the Marital Standard of Living applicable in this matter included a registered investment advisor compensated with community funds, a financial planner compensated with community funds, an accountant compensated with community funds, health insurance paid for with community funds, medical care paid for with community funds, maintenance on 3 homes

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paid for with community funds including without limitation bi-weekly cleaning service, monthly gardener and landscaping, and monthly pool maintenance service."

Response:

Responding Party **objects** to Request No. 5 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion;
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 6

Request:

"Admit that in 2019, your combined contributions to pension plans, saving, investment, and retirement accounts, exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 6 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 7

Request:

"Admit that in 2020, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

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Los Angeles, CA 90024
(310) 473-0798

Response:

Responding Party **objects** to Request No. 7 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 8

Request:

"Admit that in 2021, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 8 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 9

Request:

"Admit that in 2022, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

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10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

Response:

Responding Party **objects** to Request No. 9 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 10

Request:

"Admit that the monthly amount you propose for spousal support to Respondent is less than the monthly amount you spent on discretionary personal expenses, including travel, luxury goods, dining, and entertainment, during the marriage."

Response:

Responding Party **objects** to Request No. 10 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 11

Request:

"Admit that the unimplanted embryos are Respondent's separate property."

Response:

Responding Party **objects** to Request No. 11 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 12

Request:

"Admit that there are no written agreements concerning the existing unimplanted embryos."

Response:

Responding Party **objects** to Request No. 12 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 13

Request:

"Admit that there are no oral agreements concerning the existing unimplanted embryos."

Response:

Responding Party **objects** to Request No. 13 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

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Los Angeles, CA 90024
(310) 473-0798

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(310) 473-0798

REQUEST NO. 14

Request:

"Admit that since your date of separation, you have transferred funds from community accounts to accounts held solely in your name without prior knowledge or disclosure to Respondent."

Response:

Responding Party **objects** to Request No. 14 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 15

Request:

"Admit that you have made investments with community funds since separation without Respondent's consent."

Response:

Responding Party **objects** to Request No. 15 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

///

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REQUEST NO. 16

Request:

"Admit that you were aware of accounts containing community funds solely in your name or control on March 16, 2023, that were not held in an account in the name of the Borenstein-Goldshteyn Family Trust."

Response:

Responding Party **objects** to Request No. 16 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Unintelligible;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 17

Request:

"Admit that you provided no additional services under the 2022 Overall Term Agreement between Steeplechase Amusements, Inc. and HBO after your asserted date of separation."

Response:

Responding Party **objects** to Request No. 17 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion;
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

///

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Los Angeles, CA 90024
(310) 473-0798

REQUEST NO. 18

Request:

"Admit that you applied community tax refunds to your own separate tax liabilities without Respondent's consent."

Response:

Responding Party **objects** to Request No. 18 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 19

Request:

"Admit that you attempted to purchase real estate in your name only using community funds without Respondent's consent."

Response:

Responding Party **objects** to Request No. 19 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Deny.

REQUEST NO. 20

Request:

"Admit that you have not fully complied with the terms of the Temporary and Provisional Spousal Support Agreement."

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Response:

Responding Party **objects** to Request No. 20 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 21

Request:

"Admit that Respondent is not yet self-supporting for spousal support purposes."

Response:

Responding Party **objects** to Request No. 21 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Deny.

REQUEST NO. 22

Request:

"Admit that you have not produced any communications with any party regarding any of your claims or defenses, including your claims to credits, reimbursement, allocation, characterization, or separate property contentions (if any)."

Response:

Responding Party **objects** to Request No. 22 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

REQUEST NO. 23

Request:

"Admit that your personal journal contains entries in your handwriting describing your "obsession" for Rebecca Bertuch and your financial support of her during the marriage."

Response:

Responding Party **objects** to Request No. 23 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Psychotherapist-patient privilege;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

DATED: 04/15/2025 BY: _____

Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

VERIFICATION

I, Max David Borenstein, declare that I am the Petitioner in this proceeding. I have reviewed the foregoing Petitioner's Responses to Requests for Admission in their entirety. The Responses therein are true and correct to the best of my knowledge.

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

DATED: April 14, 2025 BY: _____

Max David Borenstein

Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
(310) 473-0798

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1650, Los Angeles, California 90024.

On April 15, 2025, I served the foregoing document described as **PETITIONER'S RESPONSES TO REQUESTS FOR ADMISSION** on the interested parties in this action by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows: ☒ by attaching a digital copy of the document to the email address provided as follows:

J.R. Howell, Esq.
Law Office of J.R. Howell
1223 Wilshire Blvd.
P. O. Box 543
Santa Monica, CA 90403

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

Jason P. Koch, Esq.
The Law Office of Jason P. Koch
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

[ ] BY CAUSING TO BE PERSONALLY SERVED: I caused delivery of such envelope by hand to the offices of the addressee.

[ ] VIA OVERNIGHT DELIVERY: : I enclosed the documents in an envelope or package by an overnight delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. The envelope or package was designated for next business day delivery, with all charges billed to sender.

[XX] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the following electronic notification addresses: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com; jason@jasonkochlaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 15, 2025, at Los Angeles, California.

_____
Blanca Parks

J.R. HOWELL (State Bar No. 268086)
jrhowell@jrhlegalstrategies.com
LAW OFFICE OF J.R. HOWELL
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P.O. Box 543
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ANNE E. GROVER (*Pro Hac Vice*)
agrover@gbfamilylawyers.com
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Eleven North Washington Street
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Rockville, MD 20850
Tel: (301) 358-1813, ext. 402

JASON P. KOCH (State Bar No. 325156)
jason@jasonkochlaw.com
THE LAW OFFICE OF JASON P. KOCH
3 West Carrillo Street, Suite 216
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Tel: (805) 695-4527
Fax: (805) 695-4528

ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **SEPARATE STATEMENT IN SUPPORT OF REQUEST FOR ORDER TO COMPEL FURTHER RESPONSES TO PETITIONER'S REQUEST FOR ADMISSIONS AND INTERROGATORIES**

SEPARATE STATEMENT

Respondent submits this Separate Statement in support of the Request for Order to Compel Further Responses to Respondent's Request for Admissions Nos. Nos. 6-18, 20, 22, and 23; and Form Interrogatory No. 17.1.

REQUEST FOR ADMISSIONS

PETITIONER'S VERBATIM GENERAL OBJECTION TO ALL REQUESTS FOR ADMISSION:

GENERAL RESPONSE

Responding Party's discovery, investigations, and preparation for trial of this matter have not been completed as of the date of this Response. Therefore, Responding Party does not purport to state herein anything more than the information presently known to and discovered by Responding Party. Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently within Responding Party's knowledge, would be included in this Response.

Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently in Responding Party's knowledge, would be included in this Response. Responding Party specifically reserves the right, at this time, to rely on any information generated through further discovery, including that physically possessed, but not yet identified as relevant to this action. Responding Party also specifically reserves the right, at the time of trial or other hearing, to introduce evidence of any sort which may hereafter be discovered, as well as documents which may hereafter be discovered. Responding Party also specifically reserves the right to amend and/or supplement this Response.

Each of the following responses is subject to all valid objections as to competence, relevance, materiality, propriety, admissibility, and any other objections on grounds that will require the exclusion of any response hereto at the time of trial. Responding Party further objects to each request to the extent that said request seeks documents concerning non-parties on the basis that such information is protected from production, is privileged pursuant to *Webb v. Standard Oil* (1957) 49 Cal.2d 508, and invades the right of privacy of such persons protected by the United States Constitution and the Constitution of the State of California. All such objections and grounds are reserved and may be interposed at the time of trial or other hearing.

LAW OFFICE OF J.R.HOWELL

Subject to the foregoing, Responding Party submits the following responses to the Requests for Admission, Set One, propounded by Propounding Party:

Legal and Factual Reasons for Overruling these Objections, Compelling Further Response, and Imposing Sanctions:

General objections, by definition, are "too general" to be properly made. California Code of Civil Procedure ("CCP") § 2033.290(a)(2). Even though several Requests may be objectionable on the same ground they, may not be objected to as a group. *Hogan and Weber*, California Civil Discovery (2d. ed 2009) § 518.

Request No. 6:

"Admit that in 2019, your combined contributions to pension plans, saving, investment, and retirement accounts, exceeded $1,000,000.00."

Response to Request for Admissions No. 6:

Responding Party **objects** to Request No. 6 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

LAW OFFICE OF J.R.HOWELL

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court, as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430 (requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

LAW OFFICE OF J.R.HOWELL

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 7:

"Admit that in 2020, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response to Request for Admissions No. 7:

Responding Party **objects** to Request No. 7 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

LAW OFFICE OF J.R.HOWELL

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

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Request No. 8:

"Admit that in 2021, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response to Request for Admissions No. 8:

Responding Party **objects** to Request No. 8 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and

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must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 9:

"Admit that in 2022, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

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Response to Request for Admissions No. 9:

Responding Party **objects** to Request No. 9 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

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Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 10:

"Admit that the monthly amount you propose for spousal support to Respondent is less than the monthly amount you spent on discretionary personal expenses, including travel, luxury goods, dining, and entertainment, during the marriage."

Response to Request for Admissions No. 10:

Responding Party **objects** to Request No. 10 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Improper form (Code of Civil Procedure section 2033.060(f)).

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's monthly discretionary personal expenses, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's monthly discretionary personal expenses are directly relevant to the issues before the Court as, upon information and belief, Petitioner's position is that Respondent should receive less in monthly spousal support that Petitioner's spends on his monthly discretionary personal expenses. Respondent has requested alimony, so the marital standard of living, income available for support and appropriate adjustments to temporary support are at issue at the trial in this matter. Further, Petitioner's financial circumstances may form the basis for some requests for attorneys' fees and costs in this matter.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request is in improper form is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to

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the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 11:

"Admit that the unimplanted embryos are Respondent's separate property."

Response to Request for Admissions No. 11:

Responding Party **objects** to Request No. 11 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of

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the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusions are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010*; Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request

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for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 12:

"Admit that there are no written agreements concerning the existing unimplanted embryos."

Response to Request for Admissions No. 12:

Responding Party **objects** to Request No. 12 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of

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> any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusions are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969)

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71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco*, *supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 13:

"Admit that there are no oral agreements concerning the existing unimplanted embryos."

Response to Request for Admissions No. 13:

Responding Party **objects** to Request No. 13 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of

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> any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969)

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71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 14:

"Admit that since your date of separation, you have transferred funds from community accounts to accounts held solely in your name without prior knowledge or disclosure to Respondent."

Response to Request for Admissions No. 14:

Responding Party **objects** to Request No. 14 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to

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> the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered

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"if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to a Request for Admissions. In addition, Petitioner failed to identify which part of the Request he asserts calls for speculation. This Request does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Form. The question asks Petitioner to admit or deny a single fact. It is not compound in violation of the rules as Petitioner objects.

Petitioner's rote assertions of "vague," "calls for speculation," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 15:

"Admit that you have made investments with community funds since separation without Respondent's consent."

Response to Request for Admissions No. 15:

Responding Party **objects** to Request No. 15 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for legal conclusion and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

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Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 16:

"Admit that you were aware of accounts containing community funds solely in your name or control on March 16, 2023, that were not held in an account in the name of the Borenstein-Goldshteyn Family Trust."

Response to Request for Admissions No. 16:

Responding Party **objects** to Request No. 16 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Unintelligible;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is unintelligible, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

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Improper Assertion of "Unintelligible." As a matter of law, the objection fails: *See Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 17:

"Admit that you provided no additional services under the 2022 Overall Term Agreement between Steeplechase Amusements, Inc. and HBO after your asserted date of separation."

Response to Request for Admissions No. 17:

Responding Party **objects** to Request No. 17 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion; and,

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3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon*

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v. Superior Court (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (Cembrook v. Superior Court of City and County of San Francisco, Supra, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

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Request No. 18:

"Admit that you applied community tax refunds to your own separate tax liabilities without Respondent's consent."

Response to Request for Admissions No. 18:

Responding Party **objects** to Request No. 18 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and

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must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for legal conclusion and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 20:

"Admit that you have not fully complied with the terms of the Temporary and Provisional Spousal Support Agreement."

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Response to Request for Admissions No. 20:

Responding Party **objects** to Request No. 20 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's compliance with a temporary agreement, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's compliance with the Temporary and Provisional Spousal Support Agreement is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

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Petitioner's objection that this Request calls for legal conclusion is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, Supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*
Petitioner's rote assertions of "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Request No. 22:

"Admit that you have not produced any communications with any party regarding any of your claims or defenses, including your claims to credits, reimbursement, allocation, characterization, or separate property contentions (if any)."

Response to Request for Admissions No. 22:

Responding Party **objects** to Request No. 22 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

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Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's lack of production of relevant documents, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's lack of production of relevant documents is directly relevant to the issues before the Court as much of the community funds are in Petitioner's sole control and, therefore, Respondent has no way to access certain or documents information related to community funds except through Petitioner. The issues of this case include the parties' date of separation, what assets are community versus separate property, a post-separation accounting, income available for support and marital standard of living. Petitioner's income derives from a number of sources, many of which he has claimed are wholly or partially separate and upon information and belief, communications to determine when work was performed and income earned, the parties' date of separation and mindset during 2022, etc. are all relevant to these issues.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

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Petitioner's objections that this Request is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (See *Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, Supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (Lieb v. Superior Court In and For Orange County, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Form. Petitioner's objection that the request is compound or disjunctive fails— the request asks him to admit only one fact. The list that follows this fact was merely exemplary and he can deny or admit that single fact with one admission or denial.

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Petitioner's rote assertions of "vague," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

FORM INTERROGATORIES

PETITIONER'S VERBATIM GENERAL OBJECTION

GENERAL RESPONSE

Responding Party's discovery, investigations, and preparation for trial of this matter have not been completed as of the date of this Response. Therefore, Responding Party does not purport to state herein anything more than the information presently known to and discovered by Responding Party. Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently within Responding Party's knowledge, would be included in this Response.

Responding Party reserves the right to continue discovery and investigation in this matter for information which, if Responding Party had presently in Responding Party's knowledge, would be included in this Response. Responding Party specifically reserves the right, at this time, to rely on any information generated through further discovery, including that physically possessed, but not yet identified as relevant to this action. Responding Party also specifically reserves the right, at the time of trial or other hearing, to introduce evidence of any sort which may hereafter be discovered, as well as documents which may hereafter be discovered. Responding Party also specifically reserves the right to amend and/or supplement this Response.

Each of the following responses is subject to all valid objections as to competence, relevance, materiality, propriety, admissibility, and any other objections on grounds that will require the exclusion of any response hereto at the time of trial. Responding Party further objects to each interrogatory to the extent that said interrogatory seeks documents concerning non-parties on the basis that such information is protected from production, is privileged pursuant to *Webb v. Standard Oil* (1957) 49 Cal.2d 508, and invades the right of privacy of such persons protected by the United States Constitution and the Constitution of the State of California. All such objections and grounds are reserved and may be interposed at the time of trial or other hearing.

Subject to the foregoing, Responding Party submits the following responses to the Form

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Interrogatories—General, Set Three, propounded by Propounding Party:

Legal and Factual Reasons for Overruling these Objections, Compelling Further Response, and Imposing Sanctions:

General objections, by definition, are "too general" to be properly made. CCP § 2030.300(a)(3). Even though several Requests may be objectionable on the same ground they, may not be objected to as a group. *Hogan and Weber*, California Civil Discovery (2d. ed 2009) § 518.

Respondent requests an order overruling the general objections and imposing sanctions for having to do so.

Interrogatory No. 17.1:

"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."

Response to (Request for Admission No. 1):

Insofar as it pertains to Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Burdensome and harassing;
2. Calls for speculation;
3. Seeks documents and/or information protected by the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges;
4. Calls for legal conclusion; and,
5. Improper form (Code of Civil Procedure section 2033.060 (f)).

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory

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17.1:

On April 6, 2022, after months of conflict and multiple failed attempts at marital counseling, I informed Sofiya of my intent to end our marriage. Since then, we have led separate lives; living in separate residences, ending our sexual relationship, and limiting our communication to logistical discussions about our dog Munch, our houseplants, and how to ensure we did not cross paths when travelling to and from our two Los Angeles-area homes. In the course of these communications, I remained clear and unwavering in my representations to Sofiya about my intent to end our marriage. Sofiya and I did not continue our sexual relationship or make any attempt to reconcile, nor did we continue to travel together, socialize with one another, celebrate holidays together, or otherwise maintain the appearance of being married. In the months between April 6, 2022 and August 23, 2022, Sofiya repeatedly confirmed her understanding of my decision to end our marriage and actively participated in the logistics of dividing our lives.

The persons with knowledge of these facts are: Mary Kay Cocharo (310-828-2624); Kelly White (310-213-4249); Laura Borenstein (818-613-5729; 5401 Zelzah Ave #110 Encino, CA 91316); Monique Feig (310-877-6941); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); Klavdia Goldshteyn (323-839-9960; 8505 Gulana Ave Unit 4106, Playa Del Rey, CA 90293).

The documents and other tangible things that support my response are the text messages which I have already produced (specifically, in response to Demand 42 of the Demand for Production (Set Two) propounded by Propounding Party on March 14, 2024, to which Responding Party produced responsive documents on May 6, 2024).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the parties' date of separation, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of

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> any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

The date of separation is directly relevant to the issues before the Court as it directly impacts which property is considered community property versus separate property.

Other than vaguely referring to text messages produced by Petitioner, Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is burdensome and harassing, calls for speculation, seeks documents and/or information protected by the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Burdensome and Harassing." This objection fails as a matter of law. The objections of "burdensome" and "harassing" are both meritless and frivolous. There is a "burden" inherent in the discovery process in all lawsuits, and a general "objection" of burden is insufficient to deny a requesting party's rights under the Civil Discovery Act. *West Pico*

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Furniture Co. v. *Superior Court*, 56 Cal.App.2d 418 (1961). Petitioner confuses burden with effort.

As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in connection with discovery requests, responding counsel should:

> Avoid raising the "burdensome and oppressive" objection unless the facts are *truly unusual* (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, *state the reasons* for your objection. [Italics in original.]

Id.

The statutory test for a protective order on the basis of "burden" is set forth in CCP § 2017(c):

> The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery ***clearly outweighs*** the likelihood that the information sought will lead to the discovery of admissible evidence.

Id. (emphasis added).

The California Supreme Court has held that before a trial court may restrict a discovery method for being unduly burdensome, there must be evidence in the record to sustain that conclusion. Indeed, there must be evidence specifically quantifying the burden imposed on the responding party. *West Pico Furniture Co.* v. *Superior Court,* 56 Cal.App.2d 418, 418-419; *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 428.

Here, Petitioner's written response does not identify any type of burden and makes no effort to specify the same. The objections should be overruled.

<u>Improper Assertion of "Calls for Speculation."</u> Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

<u>Failure to Produce a Privilege Log</u>: Petitioner objected to this request on the basis of the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges, but Petitioner failed to produce a Privilege Log along with the written responses.

The failure to produce a Privilege Log under these circumstances is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from

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disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*, 122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998). Petitioner has failed to produce any document resembling a privilege log.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive

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request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for speculation," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Response to (Request for Admission No. 2):

Insofar as it pertains to Request for Admission No. 2 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 2 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question to be asking me if I believe I am due any reimbursements for my separate property used to acquire or capitally improve community property, I answer as follows: I believe I am due reimbursements for the use of my separate property income received during the marriage for work performed prior to marriage that was used to acquire community property, like the Clover residence occupied by Sofiya. The documents and facts that support this belief have already been provided to Sofiya via my forensic accountants when they provided my 2640 reimbursement schedule and the backup documents thereto, and will be supplemented by me in my forthcoming responses to Demand for Production (Set Three), propounded by Propounding Party on March 29, 2025. In addition to myself, the people who have knowledge of these facts are Eric Feig (8730 Wilshire Blvd., Suite 350, Beverly Hills, CA 90211; 424-274-3830); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); and Reichman & Associates, P.C. (6420 Wilshire Blvd., Suite 720, Los Angeles, CA 90048; 323-549- 2160), whom I have retained as forensic accountants in connection with this marital dissolution proceeding.

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Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to reimbursements, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether Petitioner contends that reimbursements are owed to him is directly relevant to the issues before the Court as it directly impacts the analysis of community property versus separate property, the post-separation accounting, the financial circumstances of both parties, etc.

Other than vaguely referring to documents provided to Respondent via Petitioner's forensic accountants, Petitioner failed to properly identify any of the documents or tangible things that support his response. Petitioner also stated that he will be supplementing his documents, but has failed to do so.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to

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the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 3):

Insofar as it pertains to Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question, I am to explain what property exists that I claim to be separate, which I understand to be property acquired by me prior to marriage, after separation, or during the marriage by gift, bequest, devise or descent. Based on the foregoing understanding of the question, I respond as follows:

I was a successful writer prior to marrying Sofiya. For standalone projects, I worked on multiple projects, some of which were completed prior to marriage, some of which were commenced prior to marriage but completed during the marriage, and some of which were commenced and completed after marriage. The list of the projects and the corresponding percentages of before marriage and during marriage and after marriage work, as applicable, based on my best estimate, have already been provided to Sofiya through my forensic accountants and are currently being supplemented through my forthcoming responses to Demand

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for Production (Set Three), propounded by Propounding Party on March 29, 2025. For ongoing projects—like projects that require me to continually preform services not limited to just one script—the work performed after Sofiya and I separated and my compensation therefore is my separate property. Additionally, my father passed away in 2022. I inherited some personal items from him which are my separate property. Additionally, my personal furnishings whenever acquired are my separate property. There are also items of personal property, like furniture and household items, that I acquired prior to marriage that are my separate property. Finally, the contents of the home I lived in on PCH before it burned down were my separate property as they were either personal furnishings or items I acquired with my separate property earnings after Sofiya and I separated. It would be impossible to go into the level of detail called for in the question for all separate property (each kitchen utensil, each item of clothing, for example), but generally, as to intellectual property, the persons with knowledge of these facts are Kevin Falls (EP), Lindsey Springer (Executive), Alex Garcia, and Gareth Edwards. As to my services contracts with HBO the persons with knowledge of these facts are Jim Hecht (EP), the Cast and Crew of Winning Time, and HBO Legal. As to inherited property, the persons with knowledge of these facts are my parents.

<u>Legal and Factual Reasons for Compelling a Further Response:</u>

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

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Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

Other than vaguely referring to documents provided to Respondent via Petitioner's forensic accountants, Petitioner failed to properly identify any of the documents or tangible things that support his response. Petitioner also stated that he will be supplementing his documents, but has failed to do so.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 6):

Insofar as it pertains to Request for Admission No. 6 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1

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on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

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Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 7):

Insofar as it pertains to Request for Admission No. 7 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation;

2. Vague; and,

3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request

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is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 8):

Insofar as it pertains to Request for Admission No. 8 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,

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3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably

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calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 9):

Insofar as it pertains to Request for Admission No. 9 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,

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3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably

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calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 10):

Insofar as it pertains to Request for Admission No. 10 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

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A. Good Cause for Discovery.

This Request seeks information related to Petitioner's monthly discretionary personal expenses, which are extremely relevant in this case, which are extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's monthly discretionary personal expenses are directly relevant to the issues before the Court as, upon information and belief, Petitioner's position is that Respondent should receive less in monthly spousal support that Petitioner's spends on his monthly discretionary personal expenses.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated

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to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation" and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 11):

Insofar as it pertains to Request for Admission No. 11 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of

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the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for

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"any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 12):

Insofar as it pertains to Request for Admission No. 12 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;

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2. Vague; and,

3. Calls for legal conclusion.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

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Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous

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requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969)

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 13):

Insofar as it pertains to Request for Admission No. 13 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

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B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory.

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"Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 14):

Insofar as it pertains to Request for Admission No. 14 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Vague;
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

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> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply."

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California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

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Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "vague," "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 15):

Insofar as it pertains to Request for Admission No. 15 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

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Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are

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used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 16):

Insofar as it pertains to Request for Admission No. 16 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Unintelligible;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

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> Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is unintelligible, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

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Improper Assertion of "Unintelligible." As a matter of law, the objection fails: *See Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "unintelligible," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 17):

Insofar as it pertains to Request for Admission No. 17 of the Requests for Admission

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served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion;
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that

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consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case

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against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 18):

Insofar as it pertains to Request for Admission No. 18 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

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> Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

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Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 20):

Insofar as it pertains to Request for Admission No. 20 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion.

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Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's compliance with a temporary agreement, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's compliance with the Temporary and Provisional Spousal Support Agreement is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably

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calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation" and "calls for legal conclusion" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 21):

Insofar as it pertains to Request for Admission No. 21 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 21 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

The facts on which I base this response are set forth on Page 2 of the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1. In relevant part, said stipulation and order provides that: "Respondent shall be imputed with employment income of $7,000 per month for all purposes in this case, including pendente lite requests for orders, trial, and post-trial requests for order, if any, for all of which Respondent's imputation of employment income of $7,000 per months shall be res judicata." The documents and other tangible things that support my response are the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1.

<u>Legal and Factual Reasons for Compelling a Further Response:</u>

A. Good Cause for Discovery.

This Request seeks information whether Petitioner admits that Respondent is not yet self-supporting, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Other than vaguely referring to the stipulation and order entered on June 28, 2024, Petitioner failed to properly identify any of the documents or tangible things that support his response.

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B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 22):

Insofar as it pertains to Request for Admission No. 22 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's lack of production of relevant documents, which is extremely relevant in this case. The Code of Civil Procedure states:

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> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's lack of production of relevant documents is directly relevant to the issues before the Court as much of the community funds are in Petitioner's sole control and, therefore, Respondent has no way to access certain or documents information related to community funds except through Petitioner.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is calls for speculation, vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition,

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Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (*Singer v. Superior Court*, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; *Universal Underwriters Ins. Co. v. Superior Court*, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].) ;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

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Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Response to (Request for Admission No. 23):

Insofar as it pertains to Request for Admission No. 23 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Seeks documents and/or information protected by the psychotherapist-patient privilege;
3. Vague; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Legal and Factual Reasons for Compelling a Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's own statements, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's personal journals which contain his own statements are directly relevant to the issues before the Court.

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Petitioner failed to properly identify any of the documents or tangible things that support his response, including but not limited to his personal journals.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, seeks documents and/or information protected by the psychotherapist-patient privilege, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of Psychotherapist-Patient Privilege: Pursuant to Cal. Evid. Code § 1014, the psychotherapist patient-privilege applies to confidential communications between a patient and the patient's psychotherapist. Petitioner's personal journal entries do not qualify as a confidential communication between patient and psychotherapist. See Cal. Evid. Code § 1012.

Failure to Produce a Privilege Log: Petitioner objected to this request on the basis of the the attorney-client, attorney, work product, psychotherapist-patient, and clergy-penitent privileges, but Petitioner failed to produce a Privilege Log along with the written responses.

The failure to produce a Privilege Log under these circumstances is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more

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responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*, 122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998). Petitioner has failed to produce any document resembling a privilege log.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

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Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: May 30, 2025 By: _____

J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,

Respondent,

v.

SOFIYA ALEXANDRA GOLDSHTEYN,

Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

APPELLANT'S APPENDIX
VOLUME 2 OF 11

Pages 259-450

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ATTORNEY FOR (*name*): Sofiya Goldshteyn, Respondent

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: Same
CITY AND ZIP CODE: Los Angeles 90012
BRANCH NAME: Central District

PETITIONER: Max Borenstein
RESPONDENT: Sofiya Goldshteyn
OTHER PARENT/PARTY:

FOR COURT USE ONLY

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/6/2025 7:17 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Barajas, Deputy Clerk

(Department, ST2B).
Hearing Information:
7/24/2025 8:30 AM

CASE NUMBER:
22STFL08826

REQUEST FOR ORDER ☐ **CHANGE** ☐ **TEMPORARY EMERGENCY ORDERS**

☐ Child Custody ☐ Visitation (Parenting Time) ☐ Spousal or Partner Support
☐ Child Support ☐ Property Control ☐ Attorney's Fees and Costs
☒ Other *(specify)*: Motion to Compel Compliance

Note: Read form FL-300-INFO for information about how to complete this form. To ask to change or end an order that was granted in a Restraining Order After Hearing (form DV-130 or JV-255), read form FL-300-INFO and form DV-300-INFO

NOTICE OF HEARING

1. TO *(name(s))*: Max Borenstein
   ☒ Petitioner ☐ Respondent ☐ Other Parent/Party ☐ Other *(specify)*:

2. **A COURT HEARING WILL BE HELD AS FOLLOWS:**

   a. Date: Time: ☐ Dept.: ☐ Room.:
   b. Address of court ☒ same as noted above ☐ other *(specify)*:

3. **WARNING to the person served with the *Request for Order:*** The court may make the requested orders without you if you do not file a *Responsive Declaration to Request for Order* (form FL-320), serve a copy on the other parties at least nine court days before the hearing (unless the court has ordered a shorter period of time), and appear at the hearing. *(See form FL-320-INFO for more information.)*

COURT ORDER
(FOR COURT USE ONLY)

It is ordered that:

4. ☐ Time ☐ for service ☐ until the hearing is shortened. Service must be on or before *(date)*:
5. ☐ A *Responsive Declaration to Request for Order* (form FL-320) must be served on or before *(date)*:
6. ☐ The parties must attend an appointment for child custody mediation or child custody recommending counseling as follows *(specify date, time, and location)*:
7. ☐ The orders in *Temporary Emergency (Ex Parte) Orders* (form FL-305) apply to this proceeding and must be personally served with all documents filed with this *Request for Order*.
8. ☐ Other *(specify)*:

Date:

JUDICIAL OFFICER

Form Adopted for Mandatory Use
Judicial Council of California
FL-300 [Rev. January 1, 2025]

Family Code, §§ 2045, 2107, 6224, 6226, 6320–6326, 6380–6383
Government Code, § 26826
Cal. Rules of Court, rule 5.92
www.courts.ca.gov

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

REQUEST FOR ORDER

Note: Place a mark **X** in front of the box that applies to your case or to your request. If you need more space, mark the box for "Attachment." For example, mark "Attachment 2a" to indicate that the list of children's names and birth dates continues on a paper attached to this form. Then, on a sheet of paper, list each attachment number followed by your request. At the top of the paper, write your name, case number, and "FL-300" as a title. (You may use *Attached Declaration* (form MC-031) for this purpose.)

1. ☐ RESTRAINING ORDER INFORMATION
One or more domestic violence restraining/protective orders are now in effect between *(specify):*
☐ Petitioner ☐ Respondent ☐ Other Parent/Party *(Attach a copy of the orders if you have one.)*
The orders are from the following court or courts *(specify county and state):*
a. ☐ Criminal: County/state *(specify):* Case No. *(if known)*:
b. ☐ Family: County/state *(specify):* Case No. *(if known)*:
c. ☐ Juvenile: County/state *(specify):* Case No. *(if known)*:
d. ☐ Other: County/state *(specify):* Case No. *(if known)*:

2. ☐ CHILD CUSTODY ☐ I request temporary emergency orders
☐ VISITATION (PARENTING TIME)
a. I request that the court make orders about the following children *(specify):*

Child's Name	Date of Birth	☐ Legal Custody to *(person who decides: health, education, etc):*	☐ Physical Custody to *(person with whom child lives):*

☐ Attachment 2a.

b. ☐ The orders I request for ☐ child custody ☐ visitation (parenting time) are:
(1) ☐ Specified in the attached forms:
☐ Form FL-305 ☐ Form FL-311 ☐ Form FL-312 ☐ Form FL-341(C)
☐ Form FL-341(D) ☐ Form FL-341(E) ☐ Other *(specify):*
(2) ☐ As follows *(specify):* ☐ Attachment 2b.

c. The orders that I request are in the best interest of the children because *(specify):* ☐ Attachment 2c.

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

2. d. ☐ This is a change from the current order for ☐ child custody ☐ visitation (parenting time).
   (1) ☐ The order for legal or physical custody was filed on *(date)*: . The court ordered *(specify)*:

   (2) ☐ The visitation (parenting time) order was filed on *(date)*: . The court ordered *(specify)*:

☐ Attachment 2d.

3. ☐ CHILD SUPPORT
   (Note: An earnings assignment may be issued. See *Income Withholding for Support* (form FL-195)
   a. I request that the court order child support as follows:

Child's name and age	☐ I request support for each child based on the child support guideline.	Monthly amount ($) requested (if not by guideline)

☐ Attachment 3a.

   b. ☐ I want to change a current court order for child support filed on *(date)*:
   The court ordered child support as follows *(specify)*:

   c. I have completed and filed with this *Request for Order* a current *Income and Expense Declaration* (form FL-150) or I filed a current *Financial Statement (Simplified)* (form FL-155) because I meet the requirements to file form FL-155.
   d. The court should make or change the support orders because *(specify)*: ☐ Attachment 3d.

4. ☐ SPOUSAL OR DOMESTIC PARTNER SUPPORT
   (Note: An *Earnings Assignment Order for Spousal or Partner Support* (form FL-435) may be issued.)
   a. ☐ Amount requested *(monthly)*: $
   b. ☐ I want the court to ☐ change ☐ end the current support order filed on *(date)*:
   The court ordered $ per month for support.
   c. ☐ This request is to modify (change) spousal or partner support after entry of a judgment.
   I have completed and attached *Spousal or Partner Support Declaration Attachment* (form FL-157) or a declaration that addresses the same factors covered in form FL-157.
   d. I have completed and filed a current *Income and Expense Declaration* (form FL-150) in support of my request.
   e. The court should should make, change, or end the support orders because *(specify)*: ☐ Attachment 4e.

PETITIONER: Max Borenstein RESPONDENT: Sofiya Goldshteyn OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

5. [ ] PROPERTY CONTROL [ ] I request temporary emergency orders
   a. The [ ] petitioner [ ] respondent [ ] other parent/party be given exclusive temporary use, possession, and control of the following property that we [ ] own or are buying [ ] lease or rent *(specify):*

   b. The [ ] petitioner [ ] respondent [ ] other parent/party be ordered to make the following payments on debts and liens coming due while the order is in effect:
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____
   Pay to: _____ For: _____ Amount: $ _____ Due date: _____

   c. [ ] This is a change from the current order for property control filed on *(date):*
   d. Specify in Attachment 5d the reasons why the court should make or change the property control orders.

6. [ ] ATTORNEY'S FEES AND COSTS
   I request attorney's fees and costs, which total *(specify amount):* $. I filed the following to support my request:
   a. A current *Income and Expense Declaration* (form FL-150).
   b. A *Request for Attorney's Fees and Costs Attachment* (form FL-319) or a declaration that addresses the factors covered in that form.
   c. A *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.

7. [x] OTHER ORDERS REQUESTED *(specify):* [x] Attachment 7.
   See attachment 7.

8. [ ] TIME FOR SERVICE / TIME UNTIL HEARING I urgently need:
   a. [ ] To serve the *Request for Order* no less than *(number):* court days before the hearing.
   b. [ ] The hearing date and service of the the *Request for Order* to be sooner.
   c. I need the order because *(specify):* [ ] Attachment 8.

9. [x] FACTS TO SUPPORT the orders I request are listed below. The facts that I write in support and attach to this request cannot be longer than 10 pages, unless the court gives me permission. [ ] Attachment 9.

   Please see the accompanying Declaration of J.R. Howell, Esq., and Memorandum of Points and Authorities attached hereto.

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date: June 6, 2025

J.R. Howell (SBN 268086)
(TYPE OR PRINT NAME)

(SIGNATURE OF APPLICANT)

Requests for Accommodations
Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available if you ask at least five days before the proceeding. Contact the clerk's office or go to *www.courts.ca.gov/forms* for *Request for Accommodations by Persons With Disabilities and Response* (form MC-410). (Civ. Code, § 54.8.)

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ATTACHMENT 7

As set forth below, Respondent, Sofiya Goldshteyn, respectfully requests that the Court make the following findings and orders in connection with her Motion to Compel Compliance:

1. That Petitioner, Max Borenstein, issued statements of compliance on May 6, 2024;
2. That Petitioner failed to produce documents for Respondent's inspection in accordance therewith;
3. That Petitioner's conduct unreasonably increased costs of litigation;
4. That Petitioner shall produce documents consistent with his statements of compliance within ten days of the effective date of the hearing of this Request for Order;
5. That Petitioner pay the amount of $13,156.14 as a sanction directly to Respondent, Sofiya Goldshteyn; and
6. That the Court admits and receives into evidence the attached declaration of J.R. Howell, Esq., along with the exhibits attached thereto.

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ATTORNEYS FOR RESPONDENT, SOFIYA A. GOLDSHTEYN

LAW OFFICE OF J.R.HOWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, vs. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S NOTICE OF MOTION AND MOTION TO COMPEL COMPLIANCE PURSUANT TO CODE CIV. PROC. § 2031.320, SUBD. (a); REQUEST FOR SANCTIONS, COSTS, AND FEES; MEMORANDUM OF POINTS AND AUTHORITIES**

TO THE HONORABLE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on the date and time set forth in the accompanying Request for Order, or at any other such time as the Court deems proper, Respondent Sofiya A. Goldshteyn ("Respondent" or "Sofiya") will move for an order compelling compliance pursuant to *California Code of Civil Procedure* § 2031.320 and for sanctions pursuant thereto and Cal. Fam. Code § 271.

PLEASE TAKE FURTHER NOTICE THAT this motion requests that the Court make the following findings and orders:

1. That Petitioner, Max Borenstein, issued statements of compliance on May 6, 2024;
2. That Petitioner failed to produce documents for Respondent's inspection in accordance therewith;
3. That Petitioner's conduct unreasonably increased costs of litigation;
4. That Petitioner shall produce documents consistent with his statements of compliance within ten days of the effective date of the hearing of this Request for Order;
5. That Petitioner pay the amount of $13,156.14 as a sanction directly to Respondent, Sofiya Goldshteyn; and
6. That the Court admits and receives into evidence the attached declaration of J.R. Howell, Esq., along with the exhibits attached thereto.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: June 6, 2025 By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Respondent Sofiya A. Goldshteyn ("Respondent") is making a determined effort to meet the discovery cutoff deadline set for June 30, 2025, but because of Petitioner Max Borenstein's ("Petitioner") evasive discovery responses and refusals to meet and confer in good faith, she needs the Court's intervention. Respondent therefore moves pursuant to *Code of Civil Procedure* section 2031.320, subdivision (a), to compel Petitioner to honor the very statements of compliance he verified on May 6, 2024, in response to Respondent's Requests for Production of Documents. Despite promising to "comply in whole" with dozens of document requests—including core financial records and contracts—Petitioner has produced only a fraction of what he agreed to turn over.

The Court re-opened discovery on March 4, 2025, and set a June 30, 2025 discovery cutoff with a July 7, 2025 Trial Setting Conference looming. Yet after nearly a year of meet-and-confer letters, deadline extensions, and even a court-ordered stay to facilitate mediation, Respondent still lacks the documents essential to prepare her case. Petitioner's continued non-production is not merely dilatory; it squarely violates *Code of Civil Procedure* ("CCP") section 2031.320(a) and constitutes a misuse of discovery under CCP sections 2023.010(d) and (f). Under CCP section 2031.320(c), sanctions are mandatory; and *Family Code* section 271 supplies an additional discretionary basis for costs and fees where—exactly as here—a party's conduct has unreasonably driven up litigation costs.

Accordingly, Respondent respectfully asks the Court for an Order to:

1. Compel Petitioner to comply with his statements of compliance and produce all responsive documents within ten (10) calendar days;
2. Impose sanctions against Petitioner in the amount of $8,500 in attorney's fees and costs as a monetary sanction under *Code of Civil Procedure* section 2031.320(c);
3. Award costs and fees to Respondent pursuant to *Family Code* section 271; and
4. Grant such other relief as the Court deems just and proper.

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This motion is timely, requires no separate statement, and is supported by the Howell Declaration and exhibits filed concurrently. Prompt relief will prevent further prejudice to Respondent and ensure that discovery closes—on schedule—with both parties on equal footing.

II. STATEMENT OF FACTS

On March 14, 2024, Petitioner was served with Respondent's Requests for Production of Documents, Set Two, (the "RPD") pursuant to *Code of Civil Procedure* section 2031.010. (Declaration of J.R. Howell (the "Howell Declaration" or "Howell Decl.") at ¶ 8, **Exhibit A**.) Petitioner served a verified written response ("the Response") and produced some documents corresponding to the Response on May 6, 2024. (Howell Decl., at ¶ 9, **Exhibit B**.) In his Response, Petitioner stated that he would comply either in whole or in part with every request except RPD Nos. 25, 29, 37, 38, 39, 40, 53, 54, 56, 59, 61, 62, 66, and 71. (*Id*., at ¶ 10.) However, he did not comply as indicated in his verified Response, thereby necessitating this motion concerning only those requests to which Petitioner responded with a statement compliance. (*Id.*)

A. PETITIONER RESPONDED WITH STATEMENTS OF COMPLIANCE YET FAILED OR REFUSED TO PERMIT INSPECTION

Respondent's RPD Nos. 1 and 2 asked Petitioner to produce documents relevant to his responses to Respondent's Form Interrogatories–Family Law, Set Two (the "Interrogatories"). (*Id*., at ¶ 11; **Exhibit A** 2:19-3:17.) The Interrogatories are attached to the Howell Declaration as **Exhibit C**. (*Id*..) In his verified Response, Petitioner stated that he would "comply, in whole," with **RPD Nos. 1 and 2**. (Howell Decl., at ¶¶ 12; **Exhibit B**, 6:2-3 and 6:18-20.) As detailed below and in the attached Howell Declaration, Petitioner failed or refused to fully produce all documents identified in response to—or otherwise relied upon in answering—**Form Interrogatory Nos. 7, 8, 11, 15, 16, 20 and 21**. (Howell Decl., at ¶¶ 12, 21.) Petitioner likewise indicated he would "comply, in whole," with **RPD Nos. 3, 4, 6, 9, 11, 14-16, 18, 24, 27, 28, 30, 31, 33, 42-46, 55,** and **67**, and would "comply, in part" with **RPD Nos. 10, 12, 13, 50, 51,** and **70**, yet withheld or omitted documents responsive to those requests. (Howell Decl., at ¶¶ 13, 21.)

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B. ATTEMPTS TO MEET AND CONFER

Counsel for Respondent and Petitioner met and conferred repeatedly for nearly a year regarding the Response and corresponding document production. (Howell Decl., at ¶ 14.) On May 9, 2024, the undersigned transmitted a nine-page discovery deficiency letter to Petitioner's counsel that detailed the documents missing from Petitioner's production. (*Id*., **Exhibit D**.) Petitioner's response—consisting of two sentences—came a month later and neither addressed the substance of the May 9 letter nor offered to produce documents in accordance with Petitioner's statements of compliance. (*Id*., at ¶ 15, **Exhibit E.**) Rather, counsel for Petitioner offered to extend the deadline for a motion to compel further responses. (*Id*.)

On June 17, 2024, Petitioner offered via email to produce revised written responses along with verifications for a supplemental production. (Howell Decl., at ¶ 16, **Exhibit F**.) The parties agreed to extend a motion to compel deadline through July. (*Id*., at ¶ 17, **Exhibit G**.) On July 24, 2024, the parties agreed to a further extension of the motion to compel deadline through August to allow the parties to continue to meet and confer, but also to allow Petitioner sufficient time to issue a completed production responsive to the May 9th letter. (*Id*., at ¶ 18, **Exhibit H**.) On March 7, 2025, following the discovery stay discussed below, Respondent's counsel sent a ten-page letter to opposing counsel in a further effort to obtain the requested documents. (*Id*., at ¶ 19, **Exhibit *I***.) Petitioner took the position that Respondent already possessed the information requested and had waived the right to seek an order compelling production. (*Id*., at ¶ 20, **Exhibit J**.)

C. DISCOVERY ORDERS

The parties met and conferred on August 5, 2024, and agreed to a stay of discovery pending mediation. (Howell Decl., at ¶ 23.) The agreement was eventually reduced to an order issued by the Court on October 9, 2024, at which point discovery was stayed. (*Id*., at ¶ 23, **Exhibit K**.) On January 23, 2025, Petitioner issued what was entitled a "Notice of Petitioner's Limited Recall of Discovery Stay," which sought to recall the discovery stay "only as it relate[d] to the deposition of Respondent and the production of documents thereat." (*Id*., at ¶ 24, **Exhibit L**.)

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The Court effectively lifted the discovery stay on March 4, 2025, when it issued an order setting forth various discovery deadlines and established June 30, 2025, as the discovery cutoff in anticipation of a Trial Setting Conference set for July 7, 2025. (*Id*., at ¶ 25, **Exhibit M**.)

Since the Court's March 2025 discovery Order, Respondent's counsel made several unsuccessful attempts to resolve a variety of outstanding discovery issues with Petitioner's counsel. (Howell Decl., at ¶ 26.) Because of Petitioner's evasions in the discovery process, Respondent requires an order from the Court to meet the discovery deadline of June 30, 2025, and to be trial-ready by the Trial Setting Conference set for July 7, 2025. For those reasons, Respondent seeks an Order to compel Petitioner's compliance and impose monetary sanctions.

III. LEGAL ARGUMENT

A. AN ORDER IS NECESSARY DUE TO PETITIONER'S FAILURE TO PRODUCE IN ACCORDANCE WITH STATEMENTS OF COMPLIANCE

An order compelling compliance is necessary and appropriate here because the Petitioner stated he would comply with Respondent's inspection demands but refused to produce accordingly. The *Code of Civil Procedure* explicitly provides that the demanding party may move for an order compelling compliance if the responding party fails to permit inspection or copying in accordance with their statement of compliance. (CCP § 2031.320(a); *Bd. of Registered Nursing v. Superior Ct. of Orange Cnty*. (2021) 59 Cal. App. 5th 1011, 1033 [failure to make production in accordance with statement of compliance permits demanding party to file motion to compel compliance].) The Court is therefore authorized to compel Petitioner to make production in accordance with his statements of compliance in response to Respondent's demands for production.

1. THE RESPONSES INDICATED COMPLIANCE WITH THE DOCUMENT REQUESTS

Each of Petitioner's responses at issue indicate compliance with Respondent's respective document demands. A statement of compliance must specify **(i)** whether the responding party will comply with the demand and permit inspection or copying in whole or in part, and **(ii)** that all documents within the demanded category in the possession, custody, or control of the responding party and to which no objection is being made will be included in the production. (CCP § 2031.220.) Respondent's motion seeks to compel compliance with each of Respondent's demands to which

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Petitioner responded with a statement of compliance and thereafter failed to permit inspection accordingly. The statements of compliance at issue in this motion are included below, categorized by the particular iteration of Petitioner's statement of compliance:

> **Responses to RPD Nos. 1 and 2**
>
> Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. ***Petitioner responds that he will comply, in whole, and produce all non-privileged responsive documents in his possession, custody or control, and to which no objection is being made.***
>
> **Responses to RPD Nos. 3, 4, and 46**
>
> Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. ***Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made.***
>
> **Responses to RPD Nos. 6, 9, 11, 14-16, 18, 24, 27, 28, 30, 31, 33, 42, 45, 55, and 67**
>
> Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. ***Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made***.
>
> **Responses to RPD Nos. 43, 44**
>
> Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand; ***Petitioner will produce all documents in his possession, custody and control responsive to this demand.***
>
> **Responses to RPD Nos. 10, 12, 13, 50, 51, and 70**
>
> Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. ***Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made.*** As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

(Howell Decl., ¶¶ 12-13, **Exhibit B**, emphasis added.)

All of Petitioner's above responses indicated that he would "***comply in whole***"—except as to RPD Nos. 10, 12, 13, 50, 51, and 70, to which Petitioner responded he would "comply ***in part***" due to loss or destruction of some items— and produce documents. These responses satisfy the requirements of a compliance statement pursuant to *Code of Civil Procedure* section 2031.220, and are therefore obligated Petitioner to produce the items demanded for inspection.

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2. PETITIONER FAILED TO PRODUCE DOCUMENTS IN ACCORDANCE WITH HIS STATEMENTS OF COMPLIANCE

Although Petitioner stated that he would comply with the above-identified RPDs and make the documents available for Respondent's inspection, he failed to do so. The Court may order Petitioner to produce documents in accordance with his statement of compliance where he has not permitted the inspection. (CCP § 2031.320(a); *Standon Co. v. Superior Court* (1990) 225 Cal. App. 3d 898, 903.) Petitioner failed to permit Respondent to inspect the categories of documents and other materials as described below.

a. RPD Nos. 1 and 2

Respondent's **RPD Nos. 1** and **2**—to which Petitioner responded with statements of compliance—requested documents identified or relied upon in Petitioner's responses to Respondent's Form Interrogatories. Petitioner has not permitted inspection of all documents identified in response to, or relied upon, in answering the following Form Interrogatories:

No.	Subject
7, 8	Sources of income
11	Documents in support of Petitioner's separate property contentions—particularly allegations of separate property related to intellectual property, residuals, royalties, and contracts that are the source of disputed revenue
15	Documents in support of Petitioner's claims to reimbursement
16	Documents in support of Petitioner's claims to credits
20	Documents related to Petitioner's fees and expenses
21	Documents related to gifts

b. RPD Nos. 3, 4, 6, 9, 10-16, 18, 24, 27, 28, 30, 31, 33, 42-46, 50, 51, 55, 67, and 70

Petitioner further stated his intent to comply and later refused to permit Respondent to inspect the following documents and materials demanded:

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RPD No.	Subject
3	Petitioner's Post-Separation Accounting
4	Petitioner's reports and calculations of the Marital Standard of Living
6	The parties' bookkeeping records
9	Sources of income, particularly revenues related to contracts connected to the disputed pre-separation period and community effort that formed the basis for post-separation revenues
10, 15, 27	Income connected to specific projects, particularly since these relate to Petitioner's apparent claims to reimbursement
11, 12, 13	Financial accounts
14, 45	Real estate and loan applications
16	Residential leases
18	Vehicle acquisition costs
24	Applications for credit
28	Documents concerning schedules or calendars as they relate to Petitioner's claims that certain revenues are separate in nature by virtue of the date when work was performed as opposed to when the right to receive revenue was created
30, 31	Documents related to the commissions paid to third-parties and the basis therefor (i.e. agent or manager agreements)
33	Loan-out agreements, service agreements, employment agreements, etc.
42	Petitioner's claimed date of separation
43	Documents substantiating claims to reimbursement
44	Documents substantiating claims to credits
46	Documents substantiating Petitioner's separate property contentions
50, 51	Petitioner's personal transactions, including backup documents like receipts of deposit, canceled checks, and digital transactions via fintech platforms like Zelle, PayPal, and Venmo

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RPD No.	Subject
55	Source documents pertaining to claimed business expenses as they relate to calculating the MSOL
67	Photographs, audio, and video recordings
70	Documents concerning the transfer or lease of property

In light of Petitioner's stated intent to comply and subsequent refusal to permit inspection of the materials demanded as identified above, an order compelling compliance with Petitioner's statements is both necessary and proper.

B. RESPONDENT'S MOTION NOT SUBJECT TO TIME LIMIT, MEET-AND-CONFER REQUIREMENT, OR SEPARATE STATEMENT REQUIREMENT

The instant motion is timely because there is no applicable time limit. (*Bd. of Registered Nursing*, *supra*, 59 Cal. App. 5th 1011, 1033, *citing Standon Co. v. Superior Court* (1990) 225 Cal.App.3d 898, 903 ["[n]o time limit is placed on such a motion"].) Neither is a separate statement required in support of Respondent's motion. A motion to compel compliance is not among the motions requiring a separate statement under *California Rules of Court*, Rule 3.1345.

Similarly, "[u]nlike most discovery motions, a motion under [section] 2031.320(a) to compel compliance need not be accompanied by a declaration that the parties have met and conferred and attempted to resolve the issues informally." (Cal. Rules Cal. Judges Benchbook: Civil Proceedings – Discovery (2021) § 19.32.)

Even though Respondent's counsel was not required to meet and confer with opposing counsel prior to bringing this motion, to compel compliance does not include a meet and confer requirement, substantial efforts were expended over a period spanning nearly a year in an attempt to obtain a compliant production. (Howell Decl. ¶¶ 14-23.) Given the fast-approaching discovery deadline, the relief sought by this motion is vital to stem Petitioner's evasions of his discovery and disclosure obligations.

/ /

/ /

/ /

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IV. REQUEST FOR SANCTIONS, FEES, AND COSTS

A. SANCTIONS ARE MANDATORY UNDER *CODE OF CIVIL PROCEDURE* SECTIONS 2031.320(C) AND 2023.030

Code of Civil Procedure section 2031.320(c) provides for mandatory sanctions against a party that unsuccessfully opposes a motion to compel compliance:

> Except as provided in subdivision (d), **the court shall impose a monetary sanction** under Chapter 7 (commencing with Section 2023.010) **against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance**…unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(CCP § 2031.320(c), emphasis added.)

The misuse of discovery demonstrated here—failing to produce documents after repeated statements of compliance—falls squarely within section 2023.010 subdivisions (d) ("[f]ailing to respond or submit to an authorized method of discovery") and (f) ("[m]aking an evasive response to discovery"). Because Petitioner has no substantial justification for his non-production, the statute leaves the Court no discretion but to impose monetary sanctions.

B. INDEPENDENT, DISCRETIONARY SANCTIONS ARE APPROPRIATE UNDER *FAMILY CODE* SECTION 271

Family Code section 271 authorizes an award of attorney's fees and costs as a sanction when a party's conduct frustrates the policy of the law to promote settlement and reduce the cost of litigation. The only prerequisites are **(i)** a finding that the sanctioned party's conduct increased litigation costs and **(ii)** consideration of that party's ability to pay. (Fam. Code § 271; *see In re Marriage of Quay* (1993) 18 Cal.App.4th 961, 970.) Over the last year Respondent has incurred significant, needless fees in drafting deficiency letters, meeting and conferring, and bringing this motion—all because Petitioner withheld documents he promised to produce. Nothing in the record suggests an inability to pay; indeed, Petitioner's substantial Hollywood residual and royalty income, reflected in discovery already produced, confirms the contrary. An award under *Family Code* section 271 therefore "furthers the policy of the law" and is warranted.

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C. THE REQUEST FOR $13,156.14 IN FEES AND COSTS IS REASONABLE

Because Petitioner failed to comply with his statements of compliance by not producing all responsive documents, the Court should grant this motion and order the payment of attorney fees in the amount of **$13,156.14.** These fees are attested to in the Howell Decl. at ¶¶ 27-30. These hours were necessarily incurred preparing two deficiency letters, twice extending motion deadlines to accommodate Petitioner, drafting the present motion and supporting documents, and assembling the numerous exhibits. The hourly rate is well within the prevailing market for complex family-law discovery disputes in Los Angeles County. (See, e.g., *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1137 [trial court may rely on counsel's declaration of reasonableness absent contrary evidence].) No apportionment is required because all time was "inextricably intertwined" with compelling compliance.

V. CONCLUSION

Petitioner's repeated promises of compliance—followed by months of evasion—have left Respondent without the core documents she needs to prepare for the fast-approaching June 30, 2025, discovery cutoff and the July 7, 2025, Trial Setting Conference. Code of Civil Procedure section 2031.320 mandates, and *Family Code* section 271 authorizes, the imposition of monetary sanctions when conduct such as Petitioner's forces unnecessary motion practice. For the foregoing reasons, Respondent respectfully requests that this Honorable Court enter an order compelling Petitioner's compliance and impose sanctions in the amount of $8,500 payable to Respondent for the costs and fees incurred in bringing this motion.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: June 6, 2025

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

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ATTORNEYS FOR RESPONDENT, SOFIYA A. GOLDSHTEYN

LAW OFFICE OF J.R.HOWELL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, vs. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **DECLARATION OF J.R. HOWELL IN SUPPORT OF RESPONDENT'S MOTION TO COMPEL COMPLIANCE**

I, J.R. Howell, hereby declare and state:

1. I am an attorney duly licensed to practice law before all the courts of the State of California. Together with my co-counsel, Anne Grover, Esq. and Jason Koch, Esq., I represent Respondent Sofiya A. Goldshteyn (hereinafter "Respondent" or "Sofiya") in the above-captioned action. Unless otherwise stated, I have personal knowledge of the matters stated herein, and if asked to testify thereto, I would do so competently.

2. This declaration is submitted in support of Sofiya's Request for Order to compel Petitioner Max Borenstein to produce documents in accordance with statements of compliance in his verified response to Respondent's Request for Production of Documents, Set Two.

BACKGROUND

3. The matter before this Honorable Court is an extremely high net worth divorce involving two individuals in the entertainment industry. The matters in dispute include the date of separation, the marital standard of living, the disposition of unimplanted embryos, Petitioner's separate property contentions, the rights of the parties as to valuable disputed royalties, residuals, contract rights, and intellectual property, and claims to breaches of trust and breaches of fiduciary duty.

4. During marriage, Petitioner was the spouse who managed nearly all of the parties' financial affairs and did so, in part, through an array of managers, bankers, and accountants, all of whom work for Petitioner.

5. As the non-managing spouse, Sofiya has had little knowledge of the accounts that comprise the estate, for which there are millions of dollars of royalty income and income from contracts in dispute.

6. The record in this case consists of more than 10,000 pages of documents after nearly three years of dissolution proceedings and allegations that Petitioner is concealing substantial assets and dissipating community funds.

7. Sofiya's Requests for Production of Documents, Set Two, is relevant to her efforts to discover the extent of the community estate and her potential claims to reimbursement from Petitioner for wasteful spending, breaches of fiduciary duty, and breaches of trust, among other

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claims for which the information sought by Sofiya's Request for Production of Documents is essential.

PETIONER'S STATEMENTS OF COMPLIANCE

8. On March 14, 2024, Sofiya propounded Requests for Production of Documents, Set Two, (the "RPD") pursuant to *Code of Civil Procedure* section 2031.010. Attached as **Exhibit A** is a true and correct copy of Respondent's RPD.

9. Petitioner served a verified written response ("the Response") and produced some documents corresponding to the Response on May 6, 2024. Attached as **Exhibit B** is a true and correct copy of Petitioner's Response.

10. In his Response, Petitioner stated that he would comply either "in whole" or "in part" with every request except RPD Nos. 25, 29, 37, 38, 39, 40, 53, 54, 56, 59, 61, 62, 66, and 71. However, he did not comply as indicated in his verified Response, thereby necessitating this motion concerning only those requests to which Petitioner responded with a statement compliance.

11. Respondent's RPD Nos. 1 and 2 asked Petitioner to produce documents relevant to his responses to Respondent's Form Interrogatories–Family Law, Set Two (the "Interrogatories"). (**Exhibit A**, 2:19-3:17.) A true and correct copy of the Interrogatories, served March 1, 2024, are attached hereto as **Exhibit C**.

12. In his verified Response, Petitioner stated that he would "comply, in whole," with **RPD Nos. 1** and **2**. (**Exhibit B**, 6:2-3, and 6:18-20.) Petitioner failed or refused to fully produce all documents identified in response to—or otherwise relied upon in answering—**Form Interrogatory Nos. 7, 8, 11, 15, 16, 20** and **21**.

13. Petitioner's Response also indicated he would "comply, in whole," with **RPD Nos. 3, 4, 6, 9, 11, 14-16, 18, 24, 27, 28, 30, 31, 33, 42-46, 55,** and **67**, and would "comply, in part" with **RPD Nos. 10, 12, 13, 50, 51,** and **70**, yet withheld or omitted documents responsive to those requests. (See **Exhibit B**.)

RESPONDENT'S ATTEMPTS TO MEET AND CONFER

14. Counsel for Respondent and Petitioner met and conferred repeatedly for nearly a year regarding the Response and corresponding document production. On May 9, 2024, the undersigned

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transmitted a nine-page discovery deficiency letter to Petitioner's counsel that detailed the documents missing from Petitioner's production. A true and correct copy of the discovery deficiency letter is attached hereto as **Exhibit D**.

15. Counsel for Petitioner responded nearly one month later with two sentences that neither addressed the substance of the May 9th letter nor offered to produce documents in accordance with Petitioner's statements of compliance. A true and correct copy of opposing counsel's email dated June 3, 2024, is attached hereto as **Exhibit E.**

16. On June 17, 2024, Petitioner offered via email to produce revised written responses along with verifications for a supplemental production. A true and correct copy of that email is attached hereto as **Exhibit F**.

17. The parties also agreed on June 17, 2024, to extend the deadline for a motion to compel to July 8, 2024. See attached **Exhibit G**, which is a true and correct copy of email correspondence between counsel.

18. On July 24, 2024, the parties agreed to a further extension of the motion to compel deadline through August to allow the parties to continue to meet and confer, but also to allow Petitioner sufficient time to issue a completed production responsive to the May 9th letter. (**Exhibit H**.)

19. On March 7, 2025, I wrote again to opposing counsel regarding Petitioner's discovery deficiencies and failure to produce requested documents. Attached hereto as **Exhibit *I*** is a true and correct copy of that letter.

20. The reply by counsel for Petitioner on March 17, 2025, claimed that a motion to compel was time-barred as of July 8, 2024, and that Sofiya was in possession of all requested information. A true and correct copy of the March 17 letter is attached hereto as **Exhibit J**.

21. Sofiya has not received documents promised by Petitioner in response to **RPD Nos. 1-3, 4, 6, 9, 10-14-16, 18, 24, 27, 28, 30, 31, 33, 42-46, 50, 51, 55, 67,** and **70**.

22. There is no applicable time limit to Respondent's instant Motion to Compel Compliance as it seeks an order compelling Petitioner to produce documents in accordance with his statements of compliance.

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DISCOVERY ORDERS

23. The parties met and conferred on August 5, 2024, and agreed to a stay of discovery pending mediation, which was incorporated in a Stipulated Order issued by the Court on October 9, 2024. A true and correct copy of the Stipulated Order is attached hereto as **Exhibit K**.

24. On January 23, 2025, Petitioner issued what was entitled a "Notice of Petitioner's Limited Recall of Discovery Stay," which sought to recall the discovery stay "only as it relate[d] to the deposition of Respondent and the production of documents thereat." A true and correct copy of the discovery recall is attached hereto as **Exhibit L**.

25. The Court lifted the discovery stay on March 4, 2025, when it issued an order setting forth various discovery deadlines and established June 30, 2025, as the discovery cutoff in anticipation of a Trial Setting Conference set for July 7, 2025. A true and correct copy of the Court's Minute Order dated March 4, 2025, is attached hereto as **Exhibit M**.

26. Since the Court's March 2025 discovery Order, Respondent's counsel made several unsuccessful attempts to resolve a variety of outstanding discovery issues with Petitioner's counsel. Because of Petitioner's evasions in the discovery process, Respondent requires an order from the Court to meet the discovery deadline of June 30, 2025, and to be trial-ready by the Trial Setting Conference set for July 7, 2025. For those reasons, Respondent seeks an Order to compel Petitioner's compliance and impose monetary sanctions.

SANCTIONS

27. Respondent requests monetary sanctions in connection with the preparation of this motion. Counsel's hourly rates and task descriptions are set forth below. Counsel's time is measured in six minute increments. Where more than one attorney or paralegal were a part of the teleconference or meeting, only one of them is listed below. Sofiya's counsel have expended the following time, incurred the following costs, and where indicated, anticipate spending the following hours:

Biller ID	Task Description	Hours	Rate	Total
Howell	Review discovery responses	.25	850	$212.50
Howell	May 9, 2024, discovery deficiency letter	1.25	850	$1,062.50

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Biller ID	Task Description	Hours	Rate	Total
Howell	March 7, 2025, discovery deficiency letter	.75	850	$637.50
Koch	Draft motion to compel compliance, memorandum of points and authorities, and supporting documents	8.3	400	$3,320.00
Howell	Draft declaration in support of motion to compel compliance	.25	850	$212.50
Howell	Review final Motion to Compel Compliance.	1	850	$850.00
			TOTAL	**$5,495.00**

28. I anticipate that I will spend approximately 0.5 hours reviewing Petitioner's opposition, one hour preparing a reply, six hours preparing for and attending the hearing, totaling $6,375.00 in anticipated fees.

29. The cost of filing this RFO and related fees for e-filing totals $86.14.

30. The total sanctions request is $13,156.14.

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

Executed June 6, 2025 at Montreal, Quebec, Canada.

J.R. Howell (State Bar No. 268086)

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EXHIBIT

A

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MAX D. BORENSTEIN Petitioner vs. SOFIYA A. GOLDSHTEYN, Respondent.	))))))))))	CASE NO. 22STFL08826 **REQUESTS FOR PRODUCTION OF DOCUMENTS, SET TWO, TO PETITIONER MAX D. BORENSTEIN** Action Filed: August 11, 2022

PROPOUNDING PARTY: Respondent, Sofiya A. Goldshteyn

RESPONDING PARTY: Petitioner, Max D. Borenstein

SET NO.: Two

Respondent Sofiya A. Goldshteyn ("Respondent") hereby demands that Petitioner Max D. Borenstein ("Responding Party") submit a written response to this Request for Production of

Documents within thirty (30) days of the service hereof, in accordance with Section 2031.010 of the California Code of Civil Procedure. Demand is further made that the items for which production is demanded be produced via email in PDF or native file format as an attached file or downloadable link to jrhowell@jrhlegalstrategies.com and agrover@gbfamilylawyers.com, within thirty (30) days after service of these Requests, or at such other date and time as counsel for the parties may hereafter agree. Respondent's Counsel can provide a link to upload the responses for your convenience upon request.

INSTRUCTIONS

1. Each request is required to be answered on the basis of the entire knowledge of Responding Party herein, including all information in the possession of or reasonably accessible to Responding Party, Responding Party's agents, representatives, investigators, or attorneys.
2. If any of the following requests cannot be answered in full, please answer to the extent possible, specifying the reason for your inability to answer the remainder and stating whatever information or knowledge you have concerning the unanswered portion. If your answer is qualified in any particular instance, please set forth the details of such qualification.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Please produce all Documents identified in Your responses to Respondent's Form Interrogatories Set No. Two. [*"Document" means any "Writing" as defined in Evidence Code § 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means or recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds or symbols, or combination of them, whether in hard copy, physical or tangible form, or Electronic form and/or existing in the form of Electronically Stored Information; the terms "Electronic" and "Electronically Stored Information" have the*

same meaning as used in California Code of Civil Procedure § 2016.020; "you," "your," or "anyone acting on your behalf" includes you, your agents, employees, bankers, accountants, vendors, insurance companies, your business(es) (including but not limited to Steeplechase Amusements, Inc., 3778 Stewart LLC, and/or any investment fund in which you possess right, title, or other interest), their agents, their employees, your attorneys, your consultants, your investigators, and anyone else acting on your behalf or on behalf of your business(es). The definition of the terms Document, Writing, Electronic, Electronically Stored Information, You, Your, and Anyone Acting On Your Behalf as used herein shall have the same meaning in each Request in which the term or terms is used, whether capitalized or uncapitalized, whether singular or plural.]

REQUEST FOR PRODUCTION NO. 2:

Please produce all Documents referred to, consulted, or relied upon in responding to Respondent's Form Interrogatories (Set One), Respondent's Form Interrogatories (Set Two), any special interrogatories propounded by Respondent, in drafting any and all versions of Your Form FL-150 Income and Expense Declaration, and in drafting Your Form FL-142 Schedule of Assets and Debts.

REQUEST FOR PRODUCTION NO. 3:

Please produce all Documents You relied upon in creating, drafting, or conducting any post-separation accounting statements or reports, including any drafts or versions thereof, unfinished or otherwise, and communications [*the term "Communication" means any Writing, as used in Evidence Code Section 250, sent to or received by You in any form whatsoever, whether electronic or tangible. The definition of the term Communication as used herein shall have the same meaning in each Request in which the term is used, whether capitalized or uncapitalized, whether singular or plural*], including any emails or text messages You sent or received, related to the development, creation, revising, and/or editing of said post-separation accountings.

REQUEST FOR PRODUCTION NO. 4:

Please produce all Documents You relied upon in creating, drafting, or conducting any statements or reports to determine the marital standard of living, including any drafts or versions thereof, unfinished or otherwise, and Communications, including emails or text messages You sent or received, related to the development, creation, revising, and/or editing of said reports or statements.

REQUEST FOR PRODUCTION NO. 5:

All U.S. federal, state, and foreign tax returns You filed during the Relevant Time Period [*the term "Relevant Time Period" means the time from December 1, 2014 up to and including the date of production. The definition of the term Relevant Time Period as used herein shall have the same meaning in each Request in which the term is used, whether capitalized or uncapitalized, whether singular or plural*], including all source Documents including but not limited to Wage and Tax Statement (Form W-2), Statements of Recipients Miscellaneous, Interest, Dividend, Distribution (Form 1099), Schedule K-1's, and Mortgage Interest Paid (Form 1098), schedules, attachments, worksheets, drafts and amended versions thereof.

REQUEST FOR PRODUCTION NO. 6:

Produce all Documents that comprise Your Book Keeping Records [*the term "Book Keeping Records" means "Writings," as defined in Evidence Code § 250, that record all financial transactions, records of purchases, sales, receipts, payments, accounts payable, accounts receivable, statements of account, profit statements, loss statements. The definition of the term Book Keeping Records as used herein shall have the same meaning in each Request in which the term is used, whether capitalized or uncapitalized, whether singular or plural*] created or maintained during the Relevant Time Period for Your personal or business use, including without limitation the Quickbooks data files for You and/or Steeplechase Amusements, Inc.

REQUEST FOR PRODUCTION NO. 7:

Produce all Documents to or from You and the California Franchise Tax Board during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 8:

Produce all Documents to or from You and the United States Internal Revenue Service during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 9:

Produce all Documents evidencing all sources of income during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 10:

Produce all Documents that were operative or created during the Relevant Time Period that gave rise to Your right to receive income, including any amendments thereto, either during the Relevant Time Period or at any point in the future, including but not limited to contracts for writing, producing, or consultant services, including without limitation those such Documents concerning the following projects:

Godzilla

Kong: Skull Island

Godzilla II: King of the Monsters

Godzilla X Kong

Godzilla v. Kong: New Empire

Hypnotic

Untitled SpaceX

Arc of Justice

Untitled Fox Lake

Jimi

Art of the Steal

Darrow

History on Trial

Lazarus

Mona

Paladin

Rigged

Spade

The Bear

The Invisible Billionaire

What is Life Worth a.k.a. Worth

Dark Matter

Decoy

Pawn Sacrifice

Seventh Son

The GameKeeper

The Man from UNCLE

The Retriever

The Sentinel

Blank Generation

Five-Year Plan

Futures

Post

An American Standard

Best Forgotten

Boxed Up

Die Dwarf Die

No Drums No Trumpets

Homeland

Kangaroos Among the Beauty

Loose Ends

Marco/Polo

Next

On Account of Fools

Sail Away

Spivy's Roof

Sailing to Byzantium

Swordswallowers and Thin Men

Super

Survivors

The Art of Losing

JT Leroy

After the Flood

"-ING"

Untitled 1994 Comedy

1th Street

12 in a Box

Dappled Things

Foreverland

The Many Lives of Random Hancock

The Ride

Untitled Banal Asylum

Untitled Manitou House

Untitled Missing Person/Alien Fiction

Untitled Modern Magic

Untitled Prehistoric Time Travel

Untitled Profiler

Untitled Thomas Tull

Untitled Time Agency

Untitled Time Rider

War & Peace

Winning Time: Rise of the Lakers Dynasty

The Terror: Infamy

Vinyl

The Alchemist's Gate

Monarch

Yesterday

Chameleon

City of Clay

Con Queen

Day in the Life

Empire of Ash

Ex Pats

Foreverland

Ghostmakers

High Frontier

M&A

Minority Report

New World

Odd Man Out

On Defense

Pan_Ops

Perry Mason

The Stick

The Hive

The Hour

The Mount

The Penalty

Trophy

Word

Untitled High Frontier Sean Carrol Collab.

Untitled Krasnoff/Foster/Dershowitz Legal Drama

Untitled Spy TV Idea

Untitled Game of Thrones Spin-Off

This request seeks any and all such Documents with any person or entity for assignments of rights, upset price agreements, sales agreements, and contracts for writing, producing, and/or consulting services, and any and all amendments or versions thereof, including without limitation those contracts and assignments of rights related to HBO, Home Box Office, Inc., Warner Bros., Warner Bros. Discovery, WB Studio Enterprises, Inc., Legendary Pictures, and/or Hyperobject Industries.

REQUEST FOR PRODUCTION NO. 11:

All statements and other Documents relating to any type of account in which You have, or during the Relevant Time Period, have had, an interest (whether or not in your name) with a bank, thrift, credit union, savings or mutual banks, securities dealer, mutual fund, and/or brokerage during the Relevant Time Period, including without limitation all

statements during the Relevant Time Period for Morgan Stanley X1656, Morgan Stanley X1657, Morgan Stanley X1020, Morgan Stanley X1021, Morgan Stanley X1024, Morgan Stanley X1652, Morgan Stanley X3510, Kerrisdale X1714, Chase X6689, Chase X4924, Chase X0820, Chase X6997, UBS X3098, UBS X0861, UBS X1933, UBS X 7916, UBS X3055, UBS X5467, Vanguard X0919, and Vanguard X4678.

REQUEST FOR PRODUCTION NO. 12:

For all bank accounts owned or maintained by You, whether jointly or individually, whether in Your individual capacity or in the name of a business which You own or control, produce source documents for all deposits into and withdrawals, payments, or checks, including canceled checks, issued therefrom during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 13:

All statements and other Documents relating to investments of any kind, including but not limited to securities, stock certificates, debentures, bonds, notes, general and limited partnerships, futures contracts, contracts, options, mortgages, mutual funds, certificates of deposit, T-bills, REITs, tax credits, derivatives, and any other investment during the Relevant Time Period, including without limitation those such statements or other Documents for Morgan Stanley X1647, Morgan Stanley X1669, Morgan Stanley X1865, Morgan Stanley X1866.

REQUEST FOR PRODUCTION NO. 14:

All Documents relating to any ownership or other interest in real estate, including but not limited to deeds, settlement (closing/escrow) statements, mortgage loan applications (whether approved or not), line of credit applications (whether approved or not), home equity loan applications (whether approved or not), estimates and/or appraisals issued during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to any ownership or other interest in intangible property, including copyrights, trademarks, intellectual property, or royalties, including but not limited to royalties derived from intangible property, for services, and/or employment or service agreements, during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 16:

All leases and rental agreements (including real estate, automobile, and other leases) applicable to any real or personal property in effect during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 17:

All loan Documents, including but not limited to loan applications, promissory notes, security documents, and/or lender statements showing balances including the current mortgage or loan balance, and/or the total principal or interest paid, that were created, issued, submitted, or received during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 18:

All Documents showing the cost of acquisition and the title for any vehicle, including but not limited to automobiles, trucks, motorcycles, motor homes, campers, trailers, watercraft, aircraft, etc., owned during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 19:

All life insurance policies, including declarations pages and periodic statements, and documents showing surrender value and any loans against those policies in effect at any time during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 20:

All Documents relating to any deferred compensation agreements issued, created, signed, or in effect at any time during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 21:

All Documents relating to any type of annuity, pension, retirement, and /or survivor benefits plan (including but not limited to annuity contracts, retirement savings programs, retirement plans, pensions, Social Security statements, disability retirement, IRAs) issued during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 22:

Annual summaries of contributions made by You to any 401(K), IRA, Defined Benefit Plan, or other retirement or any other investment account during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 23:

All credit card statements issued during Relevant Time Period for credit cards owned or used by You, including without limitation Chase X5319, Citibank X2617, and/or American Express X5007.

REQUEST FOR PRODUCTION NO. 24:

All applications for debt or credit during the Relevant Time Period, whether approved or not, including but not limited to credit card applications, mortgage loan applications, home equity loan applications, line of credit applications, and/or securities backed loan or line of credit applications, including all Communications made in connection with said applications and any and all source documentation supporting said applications, if any.

REQUEST FOR PRODUCTION NO. 25:

All line of credit statements issued during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 26:

All paycheck stubs, 1099s, W-2s issued during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 27:

For residuals received by You during the Relevant Time Period, provide a schedule, statement, or other Document detailing each project in which You received residuals and the date period for all projects, including any such schedule, statement, or Document sent to You from or maintained by any third party that is or was under Your control during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 28:

Produce any and all calendars or schedules for business-related meetings, projects, calls, conferences, travel, from December 1, 2019, through the date of production, including any Documents that support or contradict Your claim that certain portions of revenue or income are separate, mixed, or commingled property because a portion of the labor or effort giving rise to the entitlement to that revenue or income occurred after Your alleged date of separation.

REQUEST FOR PRODUCTION NO. 29:

Produce any and all Documents, including emails and/or text messages, between You and any person who worked for you in the capacity of an assistant, secretary, or aide, in connection with any business or professional activity, including without limitation Rebecca Bertuch, from the years 2019 to the date of production.

REQUEST FOR PRODUCTION NO. 30:

All Documents evidencing commissions or fees paid to or from any third parties, including but not limited agents or managers, in connection with Your entitlement to income or revenue, including residual income or revenue, during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 31:

All Documents evidencing an entitlement to receive, or Your obligation to pay, commissions or fees to third parties out of Your performance of services, Your

entitlement to income or revenue, including residual income or revenue, that were operative during the Relevant Time Period, even if the effective date of such Document pre-dated the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 32:

All Documents describing benefits of employment (including but not limited to statements of benefits and accrued benefits, stock options and stock grants, ESOPs, per diems, expense reimbursements, use of company vehicles, health and other insurance policies, bonuses, employee incentive plans, etc.) during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 33:

All of Your employment contracts, service agreements, loan-out agreements, whether or not in force, signed or in effect at any time during the Relevant Time Period, including any amendments thereto.

REQUEST FOR PRODUCTION NO. 34:

All community property agreements, powers of attorney, nuptial agreements (prenuptial, postnuptial, antenuptial, etc.), separate property agreements, separation agreements, and wills and codicils.

REQUEST FOR PRODUCTION NO. 35:

All trusts You have established and all Documents showing contributions you have made to the trusts, all trusts in which You are a beneficiary, and all documents showing any distributions You received therefrom.

REQUEST FOR PRODUCTION NO. 36:

The following Documents relating to the finances of any business in which you have an ownership interest (excluding publicly traded businesses): all valuations and appraisals, offers to purchase, financial statements (including year-to-date), accounts receivable schedules, asset and depreciation schedules, bank statements, credit card statements,

federal, state, and local tax returns, and loan Documents during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 37:

All reports and opinions of any expert whom You are expected to call in mediation or at trial, including but not limited to Communications between You or your attorney and any expert related to this action and any of the expert's Documents related to this action, including but not limited to notes and Communications.

REQUEST FOR PRODUCTION NO. 38:

All statements signed by witnesses that You and/or your lawyer have obtained that relate to this action.

REQUEST FOR PRODUCTION NO. 39:

Produce all Communications between You and any and all witnesses related to this action.

REQUEST FOR PRODUCTION NO. 40:

Produce any and all Documents to or from You concerning the complaint against you filed by Rebecca Bertuch.

REQUEST FOR PRODUCTION NO. 41:

Produce any and all Documents concerning any gift or thing of value given by You to Rebecca Bertuch, including records of any cash, trips, meals, entertainment, or any other such gifts or thing of value.

REQUEST FOR PRODUCTION NO. 42:

All Documents that support your claim to a separation date of April 6, 2022, including Your journal entries from February 1, 2022, through September 1, 2022.

REQUEST FOR PRODUCTION NO. 43:

Produce all Documents that support Your claims to reimbursement from Respondent or the community, if any.

REQUEST FOR PRODUCTION NO. 44:

Produce all Documents that support Your claims to credits, if any, for any payments or expenses related to this action.

REQUEST FOR PRODUCTION NO. 45:

Produce any and all loan applications or mortgage applications made for the purchase of 1118 Third Street, Number 502, Santa Monica, CA 90403, and any and all Documents concerning the application and purchase offer, including emails, letters, or text messages.

REQUEST FOR PRODUCTION NO. 46:

Produce all Documents that support Your separate property claims, if any, including without limitation to any property listed on Petitioner's Schedule of Assets and Debts as Your Separate Property and any intangible property or portion thereof.

REQUEST FOR PRODUCTION NO. 47:

Produce the formation documents, by-laws, operating agreement, annual reports, meeting minutes, and stock certificates of 3778 Stewart LLC, Steeplechase Amusements, Inc., and any other company in which you hold or held an ownership interest during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 48:

Produce any and all Documents concerning the formation or creation of 3778 Stewart LLC.

REQUEST FOR PRODUCTION NO. 49:

Produce all general ledgers, annual financial statements, interim income statements, earnings statements, balance sheets, statements of payments received or made by, business contracts or agreements, rental agreements, statements of account or other record of expenditures, by any business in which You hold or held an ownership interest,

including without limitation Steeplechase Amusements, Inc., 3778 Stewart LLC, during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 50:

Produce a detailed schedule and/or any source Documents for any and all of Your personal transactions expensed through any business during the Relevant Time Period, including without limitation transactions for automobiles and related leases and payments, residence, rent, travel, transportation, hotels, clothing, gifts, meals, entertainment, utilities, and/or insurance.

REQUEST FOR PRODUCTION NO. 51:

Produce a detailed schedule and/or any source Documents, including receipts, invoices, folios, statements of accounts payable, and/or contracts, for any and all transactions incurred during the Relevant Time Period for automobiles and related leases and payments, travel costs, transportation costs, hotels, clothing, gifts, meals, entertainment, utilities, and/or insurance.

REQUEST FOR PRODUCTION NO. 52:

For any expense or payment made from any of Your accounts that was reimbursed by a third party in the tax years 2019, 2020, 2021, 2022, 2023, and 2024, produce any and all Documents concerning that expense, payment, and/or reimbursement, including without limitation reimbursed expenses for travel, meals, entertainment, transportation, hotels, accommodations, or gifts.

REQUEST FOR PRODUCTION NO. 53:

Produce any and all Documents to or from You and Palermo, Barbaro, Chinen & Pitzer LLP concerning the creation and/or management of the Borenstein-Goldshteyn Family Trust, including any Communications concerning the creation thereof.

REQUEST FOR PRODUCTION NO. 54:

Produce any and all Documents, Writings, and Communications to or from Leor Tzour and/or Brendon Terry from April 6, 2022, through the date of production.

REQUEST FOR PRODUCTION NO. 55:

Produce the source documents to establish the business nature of travel, hotel, airfare, transportation, meals, accommodations rentals, entertainment and gifts claimed as a business expense, including but not limited to receipts, invoices, or related communications, from December 1, 2019 through the date of production, including but not limited to receipts, Documents evidencing a request for reimbursement, business calendar, or other record to substantiate the business nature of said travel, hotel, airfare, transportation, meals, accommodations rentals, entertainment and/or gifts.

REQUEST FOR PRODUCTION NO. 56:

Produce any Documents evidencing, or related to, Your claim to a property or other legal interest, if any, in the embryos created after Respondent's cancer diagnosis.

REQUEST FOR PRODUCTION NO. 57:

Produce all Schedule K-1s of Kerrisdale Partners, LP issued to You during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 58:

Produce any and all Documents that depict any deposits to Kerrisdale Partners, LP, or income You received from Kerrisdale Partners, LP or Kerrisdale Capital.

REQUEST FOR PRODUCTION NO. 59:

Produce all Communications and Documents between You and any representative of Leitner, Zander & Co. LLP concerning the preparation of any tax returns for 2021 and 2022.

REQUEST FOR PRODUCTION NO. 60:

Produce any and all Communications and Documents between You and any person or entity concerning Respondent's demand for payment from You of her portion of the tax overpayment for tax year 2022.

REQUEST FOR PRODUCTION NO. 61:

Produce any Document evidencing Your effort to inform Respondent of or seek consent from Respondent for any investment or transfer of money in excess of $10,000.00.

REQUEST FOR PRODUCTION NO. 62:

Produce any and all Documents evidencing Your ownership of or ownership interest in any intangible property, or sale, transfer, or lease thereof during the Relevant Time Period.

REQUEST FOR PRODUCTION NO. 63:

Produce any and all Documents relating to any financial liability for which You are liable, either directly or indirectly, including as co-signor or guarantor, such as any loan, credit card, mortgage, lease, or any other form of debt.

REQUEST FOR PRODUCTION NO. 64:

Produce any and all Documents or Communications concerning any civil or criminal action to which You are a party or have been a party during the Relevant Time Period, including without limitation any action before any city, county, state or federal agency or administrative office, including the U.S. Equal Employment Opportunity Commission, the United States Internal Revenue Service, the California Franchise Tax Board, the California Department of Industrial Relations, the California Labor Commissioner's Office, the California Department of Fair Employment and Housing.

REQUEST FOR PRODUCTION NO. 65:

Produce any and all Documents or Communications concerning any allegations against You of civil or criminal wrongdoing [*the term "Civil Wrongdoing" means any act that*

would constitute a breach of contract, tort, or infraction of any civil or administrative law, regulation or rule of any city, county, state or of the United States; the term "Criminal Wrongdoing" means any action that would constitute a violation of the California Penal Code or any criminal law of the United States], including any labor and employment claims, during the Relevant Time Period, including without limitation any such allegations communicated to any city, county, state or federal agency or administrative office, including the U.S. Equal Employment Opportunity Commission, the United States Internal Revenue Service, the California Franchise Tax Board, the California Department of Industrial Relations, the California Labor Commissioner's Office, the California Department of Fair Employment and Housing.

REQUEST FOR PRODUCTION NO. 66:

Produce any and all Documents or Communications concerning allegations against You of harassment, abuse, mistreatment, or complaints of any kind in connection with your role as showrunner for *Winning Time: The Rise of the Lakers Dynasty*, including any Documents or Communications concerning restrictions on your access to or communications with people or places related to the production, filming, editing, or writing thereof.

REQUEST FOR PRODUCTION NO. 67:

Produce all video, audio, photographic, or other electronic recordings of any act, event, conversation having any tendency in reason to prove or disprove any fact of consequence to the determination of this action, including without limitation any such recordings on November 12, 2022.

REQUEST FOR PRODUCTION NO. 68:

Produce any and all Documents reflecting Your claim for attorney fees, litigation costs or expenses, including consultant, accountant or expert fees or costs, including without limitation fee agreements and invoices.

REQUEST FOR PRODUCTION NO. 69:

Produce any and all Documents or Communications evidencing Your claim that any community or separate property has changed its community or separate character by virtue of the transmutation doctrine, if any.

REQUEST FOR PRODUCTION NO. 70:

Produce any and all Documents or Communications evidencing Your transfer or lease or license of any property in excess of $1,000.00.

REQUEST FOR PRODUCTION NO. 71:

If You object to any of the above requests or are withholding from production any Document, or any part of any Document, on the basis of privilege, privacy, confidentiality, or any related doctrines, including without limitation the work-product doctrine, produce a detailed privilege log containing the following information:

a. The identity and capacity of all individuals who authored, sent, or received each allegedly privileged document;

b. The document's date;

c. A brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies; and

d. The precise privilege or protection asserted.

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

Date: March 13, 2024

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

EXHIBIT

B

GARRY M GEKHT, ESQ. (SBN 321424)
DRORIT BICK RAITER. ESQ. (SBN 260887)
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Attorneys for Petitioner,
MAX D. BORENSTEIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In Re the Marriage of: Petitioner: MAX DAVID BORENSTEIN and Respondent: SOFIYA ALEXANDRA GOLDSHTEYN	CASE NO.: 22STFL08826 **PETITIONER'S RESPONSES TO RESPONDENT'S DEMAND FOR PRODUCTION OF DOCUMENTS (SET NO. TWO)** Date: May 6, 2024 Place: Law Office of J.R. Howell 1223 Wilshire Boulevard P. O. Box 543 Santa Monica, C 90403

PROPOUNDING PARTY: **Respondent, SOFIYA ALEXANDRA GOLDSHTEYN**

RESPONDING PARTY: **Petitioner, MAX DAVID BORENSTEIN**

SET NUMBER: **TWO**

Petitioner, MAX DAVID BORENSTEIN, by and through his attorney, and pursuant to *Code of Civil Procedure* §2031.210 *et seq.*, hereby provides his Responses to Respondent, SOFIYA ALEXANDRA GOLDSHTEYN 's Requests for Production of Documents, Set Two, as follows:

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PRELIMINARY STATEMENT

These responses are made solely for the purposes of this civil action. Each response is subject to all objections as to competence, relevance, materiality, propriety and admissibility, as well as to any and all other objections on any grounds that would require the exclusion of any statement contained herein or any portion thereof if any of said document demands were asked of, or any statements contained herein were made by, a witness present and testifying in court, all of which objections and grounds are hereby expressly reserved and may be interposed at the time of any deposition or at or before any hearing or trial in this matter.

The following responses are based upon information presently available to and located by Petitioner and his attorneys, and, except for explicit facts expressly set forth herein, no incidental or implied admissions are intended hereby. The fact that Petitioner responds or objects to any production demand or part thereof is not intended and shall not be construed as an admission that Petitioner accepts or admits the existence of any facts set forth in or assumed by such production demand, or that such response or objection constitutes admissible evidence. The fact that Petitioner responds to all, or part, of any production demand is not intended and shall not be construed as a waiver by Petitioner of all, or any part, of any objection to any production demand made herein.

Petitioner has not completed his investigation of this action, has not completed his discovery, and may discover additional facts and/or information responsive to the production demands in the future. Some of the information sought by the production demands is not routinely compiled by Petitioner. These responses hereinafter are based on Petitioner knowledge, information and belief at this time, are made without prejudice to the following objections, and are based on his diligent search of those records that he has located and that he reasonably believes would contain the information necessary to respond to the production demands. Therefore, Petitioner specifically reserves the right to amend and/or supplement these responses at any time.

If any information has been omitted from these responses, Petitioner reserves the right to apply for relief so as to permit insertion of any responsive information omitted from these responses. It is anticipated that further investigation, discovery, legal research and analyses will supply

additional facts and information, as well as establish new factual and legal contentions. Therefore, to the extent consistent with the *Code of Civil Procedure*, the following responses are provided without prejudice to Petitioner's right to produce evidence, documentary or otherwise, of any subsequently discovered facts and/or documents. No incidental or implied admissions are intended by these responses.

To the extent that the information contained in any response herein is derived from or contained in documents or writings prepared by anyone other than Petitioner, his agents or employees, Petitioner does not admit that statements or information contained therein are true and correct.

GENERAL OBJECTIONS

The following objections are applicable to and hereby incorporated into each and every response:

1. Petitioner objects to each demand to the extent that it calls for documents and information not relevant to the post-Judgment issues before the Court, nor reasonably calculated to lead to the discovery of admissible evidence.

2. Petitioner objects to each demand herein to the extent that it calls for any documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. No such information and or documents, if any, will be produced.

3. Petitioner objects to each demand herein to the extent the demand is vague, ambiguous, unintelligible, compound and uncertain.

4. Petitioner objects to each demand herein to the extent that the demand is burdensome, oppressive, overbroad, annoying and calculated to harass and intimidate the Petitioner and to the extent that the demand seeks to impose burdens on Petitioner greater than that required by the California *Code of Civil Procedure*.

5. Petitioner objects to each demand herein to the extent that the demand calls for documents and information previously produced to the Petitioner through formal or informal

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discovery, and/or information demanded is equally available to the propounding party. No such information and/or documents, if any, will be provided.

6. Petitioner objects to each demand herein to the extent that the demand calls for documents and information already within the Petitioner's possession, custody and control. No such documents, and/or information, if any, will be produced.

7. Petitioner objects to each demand herein to the extent that the demand calls for documents and information relating to third parties which documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1.

8. Petitioner objects to each demand herein as the time period demanded is overbroad, unduly burdensome and oppressive, and harassing.

Petitioner reserves the right to supplement, amend or change his objections should information come to light though further investigation that would so warrant an amendment, supplementation or change.

The foregoing general objections are incorporated into the objections to each demand whether or not specific references are made thereto.

Without waiving any and/or all of the foregoing, Petitioner hereby provides the following responses to Petitioner's Request for Production of Documents, Set One:

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RESPONSES TO DEMAND FOR PRODUCTION OF DOCUMENTS, SET NO. TWO

DEMAND FOR PRODUCTION NO. 1

Please produce all Documents identified in Your responses to Respondent's Form Interrogatories Set No. Two. [*"Document" means any "Writing" as defined in Evidence Code§ 250, and includes the original or a copy of handwriting. typewriting, printing, photo-stating, photographing, and every other means or recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds or symbols, or combination of them, whether in hard copy, physical or tangible form, or Electronic form and/or existing in the form of Electronically Stored Information; the terms "Electronic" and "Electronically Stored Information" have the same meaning as used in California Code of Civil Procedure§ 2016.020; "you," "your," or "anyone acting on your behalf" includes you, your agents, employees, bankers, accountants, vendors, insurance companies, your business(es) (including but not limited to Steeplechase Amusements, Inc., 3778 Stewart LLC, and/or any investment fund in which you possess right, title, or other interest), their agents, their employees, your attorneys, your consultants, your investigators, and anyone else acting on your behalf or on behalf of your business(es). The definition of the terms Document, Writing, Electronic, Electronically Stored Information, You, Your, and Anyone Acting On Your Behalf as used herein shall have the same meaning in each Request in which the term or terms is used, whether capitalized or uncapitalized, whether singular or plural.]*

RESPONSE TO DEMAND NO. 1:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Petitioner further objects to this Demand to the extent that it is duplicative of the discovery sought in Response to Form Interrogatory, Set Two, and on that basis, burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 2:

Please produce all Documents referred to, consulted, or relied upon in responding to Respondent's Form Interrogatories (Set One), Respondent's Form Interrogatories (Set Two), any special interrogatories propounded by Respondent, in drafting any and all versions of Your Form FL-150 Income and Expense Declaration, and in drafting Your Form FL-142 Schedule of Assets and Debts

RESPONSE TO DEMAND NO. 2:

Objection. Petitioner objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner further objects to this Demand on the grounds that the demand is overbroad, unduly burdensome and oppressive, and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all non-privileged responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 3:

Please produce all Documents You relied upon in creating, drafting, or conducting any post-separation accounting statements or reports, including any drafts or versions thereof, unfinished or otherwise, and communications *[the term "Communication,, means any Writing, as used in Evidence Code Section 250, sent to or received by You in any form whatsoever, whether electronic or tangible. The definition of the term Communication as used herein shall have the same meaning in each Request in which the term is used,*

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whether capitalized or uncapitalized, whether singular or plural], including any emails or text messages You sent or received, related to the development, creation, revising, and/or editing of said post-separation accountings.

RESPONSE TO DEMAND NO. 3:

Objection. Petitioner objects to this demand on the grounds of mediation privilege. Petitioner further objects to this Demand on the grounds that the demand is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 4:

Please produce all Documents You relied upon in creating, drafting, or conducting any statements or reports to determine the marital standard of living, including any drafts or versions thereof, unfinished or otherwise, and Communications, including emails or text messages You sent or received, related to the development, creation, revising, and/or editing of said reports or statements.

RESPONSE TO DEMAND NO. 4:

Objection. Petitioner objects to this demand on the grounds of mediation privilege. Petitioner further objects to this Demand on the grounds that the demand is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence*

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Code §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 5:

> All U.S. federal, state, and foreign tax returns You filed during the Relevant Time Period *[the term "Relevant Time Period" means the time from December 1, 2014 up to and including the date of production. The definition of the term Relevant Time Period as used herein shall have the same meaning in each Request in which the term is used, whether capitalized or uncapitalized, whether singular or plural],* including all source Documents including but not limited to Wage and Tax Statement (Form W-2), Statements of Recipients Miscellaneous, Interest, Dividend, Distribution (Form 1099), Schedule K-1's, and Mortgage Interest Paid (Form 1098), schedules, attachments, worksheets, drafts and amended versions thereof.

RESPONSE TO DEMAND NO. 5:

Objection. Petitioner objects to this Demand on the grounds that the time period specified, is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 6:

Produce all Documents that comprise Your Book Keeping Records *[the term "Book Keeping Records" means "Writings," as defined in Evidence Code § 250. that record all financial transactions, records of purchases, sales, receipts, payments, accounts payable, accounts receivable, statements of account, profit statements, loss statements. The definition of the term Book Keeping Records as used herein shall have the same meaning in each Request in which the term is used, whether capitalized or uncapitalized, whether singular or plural]* created or maintained during the Relevant Time Period for Your personal or business use, including without limitation the Quickbooks data files for You and/or Steeplechase Amusements, Inc.

RESPONSE TO DEMAND NO. 6:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand to the extent it seeks confidential and/or proprietary information that has not been protected by a confidentiality agreement. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 7:

Produce all Documents to or from You and the California Franchise Tax Board during the Relevant Time Period.

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RESPONSE TO DEMAND NO. 7:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 8:

Produce all Documents to or from You and the United States Internal Revenue Service during the Relevant Time Period.

RESPONSE TO DEMAND NO. 8:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 9:

Produce all Documents evidencing all sources of income during the Relevant Time Period.

RESPONSE TO DEMAND NO. 9:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this

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Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand to the extent it seeks confidential and/or proprietary information that has not been protected by a confidentiality agreement. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 10:

Produce all Documents that were operative or created during the Relevant Time Period that gave rise to Your right to receive income, including any amendments thereto, either during the Relevant Time Period or at any point in the future, including but not limited to contracts for writing, producing, or consultant services, including without limitation those such Documents concerning the following projects:

Godzilla

Kong: Skull Island

Godzilla JI: King of the Monsters

Godzilla X Kong

Godzilla v. Kong: New Empire

Hypnotic

Untitled SpaceX Arc

of Justice Untitled

Fox Lake Jimi

Art of the Steal

Darrow History

on Trial Lazarus

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Mona

Paladin

Rigged

Spade The

Bear

The Invisible Billionaire

What is Life Worth a.k.a. Worth

Dark Matter

Decoy

Pawn Sacrifice

Seventh Son

The GameKeeper

The Man from UNCLE

The Retriever

The Sentinel Blank

Generation Five-

Year Plan Futures

Post

An American Standard

Best Forgotten

Boxed Up

Die Dwarf Die

No Drums No Trumpets Homeland

Kangaroos Among the Beauty

Loose Ends

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Marco/Polo

Next

On Account of Fools Sail

Away

Spivy's Roof

Sailing to Byzantium

Swordswallowers and Thin Men

Super

Survivors

The Art of Losing

JTLeroy

After the Flood

"-ING"

Untitled 1994 Comedy 1th

Street

12 in a Box Dappled

Things Foreverland

The Many Lives of Random Hancock The

Ride

Untitled Banal Asylum

Untitled Manitou House

Untitled Missing Person/Alien Fiction

Untitled Modern Magic

Untitled Prehistoric Time Travel

Untitled Profiler

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Untitled Thomas Tull

Untitled Time Agency

Untitled Time Rider

War & Peace

Winning Time: Rise of the Lakers Dynasty

The Terror: Infamy

Vinyl

The Alchemist's Gate

Monarch

Yesterday

Chameleon

City of Clay

Con Queen

Day in the Life

Empire of Ash

Ex Pats

Forever/and

Ghostmakers

High Frontier

M&A

Minority Report

New World

Odd Man Out

On Defense

Pan_Ops

Perry Mason

The Stick The

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Hive The

Hour The

Mount The

Penalty

Trophy Word

Untitled High Frontier Sean Carrol Collab. Untitled

Krasnoff/Foster/Dershowitz legal Drama Untitled

Spy TV Idea

Untitled Game of Thrones Spin-Off

This request seeks any and all such Documents with any person or entity for assignments of rights, upset price agreements, sales agreements, and contracts for writing, producing, and/or consulting services, and any and all amendments or versions thereof, including without limitation those contracts and assignments of rights related to HBO, Home Box Office, Inc., Warner Bros., Warner Bros. Discovery, WB Studio Enterprises, Inc., Legendary Pictures, and/or Hyperobject Industries.

RESPONSE TO DEMAND NO. 10:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents related to nearly 100 separate projects and that on that basis this Demand is burdensome, oppressive and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this demand to the extent it seeks confidential and/or proprietary information. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand inasmuch as it calls for Petitioner to make a legal conclusion. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

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Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 11:

All statements and other Documents relating to any type of account in which You have, or during the Relevant Time Period, have had, an interest (whether or not in your name) with a bank, thrift, credit union, savings or mutual banks, securities dealer, mutual fund, and/or brokerage during the Relevant Time Period, including without limitation all statements during the Relevant Time Period for Morgan Stanley X1656, Morgan Stanley Xl657, Morgan Stanley X1020, Morgan Stanley X1021, Morgan Stanley X1024, Morgan Stanley Xl652, Morgan Stanley X3510, Kerrisdale X1714, Chase X6689, Chase X4924, Chase X0820, Chase X6997, UBS X3098, UBS X0861, UBS Xl933, UBS X 7916, UBS X3055, UBS X5467, Vanguard X0919, and Vanguard X4678.

RESPONSE TO DEMAND NO. 11:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 12:

For all bank accounts owned or maintained by You, whether jointly or individually, whether in Your individual capacity or in the name of a business which You own or

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control, produce source documents for all deposits into and withdrawals, payments, or checks, including canceled checks, issued therefrom during the Relevant Time Period.

RESPONSE TO DEMAND NO. 12:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 13:

All statements and other Documents relating to investments of any kind, including but not limited to securities, stock certificates, debentures, bonds, notes, general and limited partnerships, futures contracts, contracts, options, mortgages, mutual funds, certificates of deposit, T-bills, REITs, tax credits, derivatives, and any other investment during the Relevant Time Period, including without limitation those such statements or other Documents for Morgan Stanley X1647, Morgan Stanley Xl669, Morgan Stanley Xl865, Morgan Stanley Xl866.

RESPONSE TO DEMAND NO. 13:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of

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Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 14:

> All Documents relating to any ownership or other interest in real estate, including but not limited to deeds, settlement (closing/escrow) statements, mortgage loan applications (whether approved or not), 1ine of credit applications (whether approved or not), home equity loan applications (whether approved or not), estimates and/or appraisals issued during the Relevant Time Period.

RESPONSE TO DEMAND NO. 14:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 15:

> All documents relating to any ownership or other interest in intangible property, including copyrights, trademarks, intellectual property, or royalties, including but not limited to royalties derived from intangible property, for services, and/or employment or service

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agreements, during the Relevant Time Period.

RESPONSE TO DEMAND NO. 15:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 16:

All leases and rental agreements (including real estate, automobile, and other leases) applicable to any real or personal property in effect during the Relevant Time Period.

RESPONSE TO DEMAND NO. 16:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 17:

All loan Documents, including but not limited to loan applications, promissory notes, security documents, and/or lender statements showing balances including the current

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mortgage or loan balance, and/or the total principal or interest paid, that were created, issued, submitted, or received during the Relevant Time Period.

RESPONSE TO DEMAND NO. 17:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 18:

All Documents showing the cost of acquisition and the title for any vehicle, including but not limited to automobiles, trucks, motorcycles, motor homes, campers, trailers, watercraft, aircraft, etc., owned during the Relevant Time Period.

RESPONSE TO DEMAND NO. 18:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 19:

All life insurance policies, including declarations pages and periodic statements, and documents showing surrender value and any loans against those policies in effect at any time during the Relevant Time Period.

RESPONSE TO DEMAND NO. 19:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 20:

All Documents relating to any deferred compensation agreements issued, created, signed, or in effect at any time during the Relevant Time Period.

RESPONSE TO DEMAND NO. 20:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 21:

All Documents relating to any type of annuity, pension, retirement, and /or survivor benefit. plan (including but not limited to annuity contracts, retirement savings programs, retirement plans, pensions, Social Security statements, disability retirement, IRAs) issued during the Relevant Time Period.

RESPONSE TO DEMAND NO. 21:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 22:

Annual summaries of contributions made by You to any 401(K), IRA, Defined Benefit Plan, or other retirement or any other investment account during the Relevant Time Period.

RESPONSE TO DEMAND NO. 22:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 23:

All credit card statements issued during Relevant Time Period for credit cards owned or used by You, including without limitation Chase X5319, Citibank X2617, and/or American Express X5007.

RESPONSE TO DEMAND NO. 23:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 24:

All applications for debt or credit during the Relevant Time Period, whether approved or not, including but not limited to credit card applications, mortgage loan applications, home equity loan applications, line of credit applications, and/or securities backed loan or line of credit applications, including all Communications made in connection with said applications and any and all source documentation supporting said applications, if any.

RESPONSE TO DEMAND NO. 24:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this

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Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 25:

All line of credit statements issued during the Relevant Time Period.

RESPONSE TO DEMAND NO. 25:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have either never existed, have been lost or destroyed and/or are otherwise not in Petitioner's possession, custody or control.

DEMAND FOR PRODUCTION NO. 26:

All paycheck stubs, I099s, W-2s issued during the Relevant Time Period.

RESPONSE TO DEMAND NO. 26:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents

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in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 27:

For residuals received by You during the Relevant Time Period, provide a schedule, statement, or other Document detailing each project in which You received residuals and the date period for all projects, including any such schedule, statement, or Document sent to You from or maintained by any third party that is or was under Your control during the Relevant Time Period.

RESPONSE TO DEMAND NO. 27:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 28:

Produce any and all calendars or schedules for business-related meetings, projects, cans, conferences, travel, from December 1, 2019, through the date of production, including any Documents that support or contradict Your claim that certain portions of revenue or income are separate, mixed, or commingled property because a portion of the labor or effort giving rise to the entitlement to that revenue or income occurred after Your alleged

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date of separation.

RESPONSE TO DEMAND NO. 28:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Petitioner further objects to this demand as vague, ambiguous and unintelligible , as the subset of documents related to the character of property exceeds the scope of the request related to calendars and schedules. Petitioner further objects to this request on the grounds that it is violative of the attorney-client privilege, attorney work product doctrine, therapist-patient privilege; physician-patient privilege and the constitutional right to privacy. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 29:

> Produce any and all Documents, including emails and/or text messages, between You and any person who worked for you in the capacity of an assistant, secretary, or aide, in connection with any business or professional activity, including without limitation Rebecca Bertuch, from the years 2019 to the date of production.

RESPONSE TO DEMAND NO. 29:

Objection. Petitioner objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent that "any person who worked for you in the capacity of an assistant, secretary, or aide, in connection with any business or professional activity" is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further

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objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Petitioner objects to this Demand on the grounds of his constitutional right to privacy. Petitioner further objects to this Demand on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence.

DEMAND FOR PRODUCTION NO. 30:

> All Documents evidencing commissions or fees paid to or from any third parties, including but not limited agents or managers, in connection with Your entitlement to income or revenue, including residual income or revenue, during the Relevant Time Period.

RESPONSE TO DEMAND NO. 30:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 31:

> All Documents evidencing an entitlement to receive, or Your obligation to pay, commissions or fees to third parties out of Your performance of services, Your entitlement to income or revenue, including residual income or revenue, that were operative during the Relevant Time Period, even if the effective date of such Document pre-dated the Relevant Time Period.

RESPONSE TO DEMAND NO. 31:

Objection. Petitioner objects to this Demand on the grounds that the time period specified

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is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand as duplicative of demand Number 30 and therefore burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 32:

> All Documents describing benefits of employment (including but not limited to statements of benefits and accrued benefits, stock options and stock grants, ESOPs, per diems, expense reimbursements, use of company vehicles, health and other insurance policies, bonuses, employee incentive plans, etc.) during the Relevant Time Period.

RESPONSE TO DEMAND NO. 32:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 33:

All of Your employment contracts, service agreements, loan-out agreements, whether or not in force, signed or in effect at any time during the Relevant Time Period, including any amendments thereto.

RESPONSE TO DEMAND NO. 33:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 34:

All community property agreements, powers of attorney, nuptial agreements (prenuptial, postnuptial, antenuptial, etc.), separate property agreements, separation agreements, and wills and codicils.

RESPONSE TO DEMAND NO. 34:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents

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in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 35:

> All trusts You have established and all Documents showing contributions you have made to the trusts, all trusts in which You are a beneficiary, and all documents showing any distributions You received therefrom.

RESPONSE TO DEMAND NO. 35:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 36:

> The following Documents relating to the finances of any business in which you have an ownership interest (excluding publicly traded businesses): all valuations and appraisals, offers to purchase, financial statements (including year-to-date), accounts receivable schedules, asset and depreciation schedules, bank statements, credit card statements, federal, state, and local tax returns, and loan Documents during the Relevant Time Period.

RESPONSE TO DEMAND NO. 36:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in

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his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 37:

All reports and opinions of any expert whom You are expected to call in mediation or at trial, inc1uding but not limited to Communications between You or your attorney and any expert related to this action and any of the expert's Documents related to this action, including but not limited to notes and Communications.

RESPONSE TO DEMAND NO. 37:

Objection. Petitioner objects to this Demand as it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030.

DEMAND FOR PRODUCTION NO. 38:

All statements signed by witnesses that You and/or your lawyer have obtained that relate to this action.

RESPONSE TO DEMAND NO. 38:

Objection. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have either never existed. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 39:

Produce all Communications between You and any and all witnesses related to this action.

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RESPONSE TO DEMAND NO. 39:

Objection. Petitioner objects to this demand on the grounds that it is vague and ambiguous. Petitioner objects this demand to the extent that the demand calls for documents and information relating to third parties which documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have either never existed. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 40:

> Produce any and all Documents to or from You concerning the complaint against you filed by Rebecca Bertuch.

RESPONSE TO DEMAND NO. 40:

Objection. Petitioner objects to each demand herein to the extent that the demand calls for documents and information relating to third parties which documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner objects to this Demand on the grounds of his constitutional right to privacy. Petitioner further objects to this Demand on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry and is unable to comply with

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this demand because, to Petitioner's knowledge, no Complaint has ever been filed with any court and he has not been served with any action instigated by Rebecca Bertuch.

DEMAND FOR PRODUCTION NO. 41:

> Produce any and all Documents concerning any gift or thing of value given by You to Rebecca Bertuch, including records of any cash, trips, meals, entertainment, or any other such gifts or thing of value.

RESPONSE TO DEMAND NO. 41:

Objection. Petitioner objects to thus demand herein to the extent that the term "of value" is vague, ambiguous, unintelligible and uncertain. Petitioner objects to each demand herein to the extent that the demand calls for documents and information relating to third parties which documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have never existed, except for perhaps a birthday gift or a meal that would not exceed $200 in value or a year-end staff gift which would have been the same to all staff members. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 42:

> All Documents that support your claim to a separation date of April 6, 2022, including Your journal entries from February 1, 2022, through September 1, 2022.

RESPONSE TO DEMAND NO. 42:

Objection. Petitioner objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner ojbects to this Demand on the grounds that it is violative of the therapist-patient privilege and the physician-

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patient privilege. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 43:

Produce all Documents that support Your claims to reimbursement from Respondent or the community, if any.

RESPONSE TO DEMAND NO. 43:

Objection. Petitioner objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner further objects to this demand to the extent it seeks documents already in Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand; Petitioner will produce all documents in his possession, custody and control responsive to this demand. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 44:

Produce all Documents that support Your claims to credits, if any, for any payments or expenses related to this action.

RESPONSE TO DEMAND NO. 44:

Objection. Petitioner objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work

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product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand; Petitioner will produce all documents in his possession, custody and control responsive to this demand. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 45:

Produce any and all loan applications or mortgage applications made for the purchase of 1118 Third Street, Number 502, Santa Monica, CA 90403, and any and all Documents \ concerning the application and purchase offer, including emails, letters, or text messages.

RESPONSE TO DEMAND NO. 45:

Objection. Petitioner objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 46:

Produce all Documents that support Your separate property claims, if any, including without limitation to any property listed on Petitioner's Schedule of Assets and Debts as Your Separate Property and any intangible property or portion thereof.

RESPONSE TO DEMAND NO. 46:

Objection. Petitioner objects to this Demand as unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product

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doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 47:

Produce the formation documents, by-laws, operating agreement, annual reports, meeting minutes, and stock certificates of 3778 Stewart LLC, Steeplechase Amusements, Inc., and any other company in which you hold or held an ownership interest during the Relevant Time Period.

RESPONSE TO DEMAND NO. 47:

Objection. Petitioner objects to the scope of this Demand as unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 48:

Produce any and all Documents concerning the formation or creation of 3778 Stewart LLC.

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RESPONSE TO DEMAND NO. 48:

Objection. Petitioner objects to the scope of this Demand as unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 49:

Produce all general ledgers, annual financial statements, interim income statements, earnings statements, balance sheets, statements of payments received or made by, business contracts or agreements, rental agreements, statements of account or other record of expenditures, by any business in which You hold or held an ownership interest, including without limitation Steeplechase Amusements, Inc., 3778 Stewart LLC, during the Relevant Time Period.

RESPONSE TO DEMAND NO. 49:

Objection. Petitioner objects to the scope of this Demand as unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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DEMAND FOR PRODUCTION NO. 50:

Produce a detailed schedule and/or any source Documents for any and all of Your personal transactions expensed through any business during the Relevant Time Period, including without limitation transactions for automobiles and related leases and payments, residence, rent, travel, transportation, hotels, clothing, gifts, meals, entertainment, utilities, and/or insurance.

RESPONSE TO DEMAND NO. 50:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 51:

Produce a detailed schedule and/or any source Documents, including receipts, invoices, folios, statements of accounts payable, and/or contracts, for any and all transactions incurred during the Relevant Time Period for automobiles and related leases and payments, travel costs, transportation costs, hotels, clothing, gifts, meals, entertainment, utilities, and/or insurance.

RESPONSE TO DEMAND NO. 51:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the

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scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 52:

For any expense or payment made from any of Your accounts that was reimbursed by a third party in the tax years 2019, 2020, 2021, 2022, 2023, and 2024, produce any and all Documents concerning that expense, payment, and/or reimbursement, including without limitation reimbursed expenses for travel, meals, entertainment, transportation, hotels, accommodations, or gifts.

RESPONSE TO DEMAND NO. 52:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

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DEMAND FOR PRODUCTION NO. 53:

Produce any and all Documents to or from You and Palermo, Barbaro, Chinen & Pitzer LLP concerning the creation and/or management of the Borenstein-Goldshteyn Family Trust, including any Communications concerning the creation thereof.

RESPONSE TO DEMAND NO. 53:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030.

DEMAND FOR PRODUCTION NO. 54:

Produce any and all Documents, Writings, and Communications to or from Leor Tzour and/or Brendon Terry from April 6, 2022, through the date of production.

RESPONSE TO DEMAND NO. 54:

Objection. Petitioner objects to this Demand on the grounds that said Demand is unduly burdensome, oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Petitioner further objects to this demand to the extent it seeks documents violative of the attorney-client privilege or the attorney work product doctrine to the extent that Tzour and/or Terry acted in a Kovel capacity.

DEMAND FOR PRODUCTION NO. 55:

Produce the source documents to establish the business nature of travel, hotel, airfare, transportation, meals, accommodations rentals, entertainment and gifts claimed as a business expense, including but not limited to receipts, invoices, or related communications, from December 1, 2019 through the date of production, including but

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not limited to receipts, Documents evidencing a request for reimbursement, business calendar, or other record to substantiate the business nature of said travel. hotel, airfare, transportation, meals, accommodations rentals, entertainment and/or gifts.

RESPONSE TO DEMAND NO. 55:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent that responsive documents, if produced, would violate the privacy of third parties pursuant to the California Constitution, Article I, § 1. Petitioner further objects to this Demand to the extent it seeks documents already in the possession, custody or control of Respondent and is therefore unduly burdensome and harassing. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Petitioner further objects to this demand as vague, ambiguous and unintelligible , as the subset of documents related to the character of property exceeds the scope of the request related to calendars and schedules. Petitioner further objects to this request on the grounds that it is violative of the attorney-client privilege, attorney work product doctrine, therapist-patient privilege; physician-patient privilege and the constitutional right to privacy. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 56:

Produce any Documents evidencing, or related to, Your claim to a property or other legal interest, if any, in the embryos created after Respondent's cancer diagnosis.

RESPONSE TO DEMAND NO. 56:

Objection. Petitioner objects to this Demand on the grounds that to the extent documents responsive to this demand are equally available to and in the custody, control and possession of Respondent, said Demand is unduly burdensome, oppressive, and harassing. Petitioner further

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objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner further objects to this demand on the grounds that it calls for Petitioner to make a legal conclusion.

DEMAND FOR PRODUCTION NO. 57:

> Produce all Schedule K-ls of Kerrisdale Partners, LP issued to You during the Relevant Time Period.

RESPONSE TO DEMAND NO. 57:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 58:

> Produce any and all Documents that depict any deposits to Kerrisdale Partners, LP, or income You received from Kerrisdale Partners, LP or Kerrisdale Capital.

RESPONSE TO DEMAND NO. 58:

Objection. Petitioner objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents

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in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 59:

Produce all Communications and Documents between You and any representative of Leitner, Zander & Co. LLP concerning the preparation of any tax returns for 2021 and 2022.

RESPONSE TO DEMAND NO. 59:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Petitioner further objects to this demand to the extent it seeks documents that may contain confidential and/or proprietary information. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 60:

Produce any and all Communications and Documents between You and any person or entity concerning Respondent's demand for payment from You of her portion of the tax overpayment for tax year 2022.

RESPONSE TO DEMAND NO. 60:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 61:

Produce any Document evidencing Your effort to inform Respondent of or seek consent

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from Respondent for any investment or transfer of money in excess of $10,000.00.

RESPONSE TO DEMAND NO. 61:

Objection. Petitioner objects to this Demand to the extent that documents responsive to this Demand are equally available and in Respondent's possession, custody and control, and on that basis, said Demand is burdensome and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 62:

Produce any and all Documents evidencing Your ownership of or ownership interest in any intangible property, or sale, transfer, or lease thereof during the Relevant Time Period.

RESPONSE TO DEMAND NO. 62:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have either never existed, have been lost or destroyed and/or are otherwise not in Petitioner's possession, custody or control. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information.

DEMAND FOR PRODUCTION NO. 63:

Produce any and all Documents relating to any financial liability for which You are liable, either directly or indirectly, including as co-signor or guarantor, such as any loan, credit card, mortgage, lease, or any other form of debt.

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RESPONSE TO DEMAND NO. 63:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 64:

> Produce any and all Documents or Communications concerning any civil or criminal action to which You are a party or have been a party during the Relevant Time Period, including without limitation any action before any city, county, state or federal agency or administrative office, including the U.S. Equal Employment Opportunity Commission, the United States Internal Revenue Service, the California Franchise Tax Board, the California Department of Industrial Relations, the California Labor Commissioner's Office, the California Department of Fair Employment and Housing.

RESPONSE TO DEMAND NO. 64:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

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Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 65:

> Produce any and all Documents or Communications concerning any allegations against You of civil or criminal wrongdoing [*the term "Civil Wrongdoing" means any act that would constitute a breach of contract, tort, or infraction of any civil or administrative law, regulation or rule of any city, county, state or of the United States; the term "Criminal Wrongdoing" means any action that would constitute a violation of the California Penal Code or any criminal law of the United States],* including any labor and employment claims, during the Relevant Time Period, including without limitation any such allegations communicated to any city, county, state or federal agency or administrative office, including the U.S. Equal Employment Opportunity Commission, the United States Internal Revenue Service, the California Franchise Tax Board, the California Department of Industrial Relations, the California Labor Commissioner's Office, the California Department of Fair Employment and Housing.

RESPONSE TO DEMAND NO. 65:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent discovery of further documents or information. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

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Los Angeles, CA 90024
(310) 473-0798

DEMAND FOR PRODUCTION NO. 66:

Produce any and all Documents or Communications concerning allegations against You of harassment, abuse, mistreatment, or complaints of any kind in connection with your role as showrunner for *Winning Time: The Rise of the Lakers Dynasty,* including any Documents or Communications concerning restrictions on your access to or communications with people or places related to the production, filming, editing, or writing thereof.

RESPONSE TO DEMAND NO. 66:

Objection. Petitioner objects to this Demand on the grounds that the time period specified is overbroad, unduly burdensome and oppressive, and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner is unable to comply with this demand because documents responsive to this demand have never existed.

DEMAND FOR PRODUCTION NO. 67:

Produce all video, audio, photographic, or other electronic recordings of any act, event, conversation having any tendency in reason to prove or disprove any fact of consequence to the determination of this action, including without limitation any such recordings on November 12, 2022.

RESPONSE TO DEMAND NO. 67:

Objection. Petitioner objects to this Demand on the grounds that the scope of this demand is unduly burdensome, oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner further objects to this demand on the grounds that it calls for Petitioner to

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make a legal conclusion. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 68:

> Produce all video, audio, photographic, or other electronic recordings of any act, event, conversation having any tendency in reason to prove or disprove any fact of consequence to the determination of this action, including without limitation any such recordings on November 12, 2022.

RESPONSE TO DEMAND NO. 68:

Objection. Petitioner objects to this Demand on the grounds that the scope of this demand is unduly burdensome, oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Petitioner further objects to this demand on the grounds that it calls for Petitioner to make a legal conclusion. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in whole and produce all responsive documents in his possession, custody or control, and to which no objection is being made.

DEMAND FOR PRODUCTION NO. 69:

> Produce any and all Documents or Communications evidencing Your claim that any community or separate property has changed its community or separate character by virtue of the transmutation doctrine, if any.

///

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Los Angeles, CA 90024
(310) 473-0798

RESPONSE TO DEMAND NO. 69:

Objection. Petitioner objects to this Demand as unduly burdensome and oppressive, and harassing. Petitioner further objects to this Demand to the extent it seeks documents or information protected by the attorney-client privilege pursuant to *Evidence Code* §954 or the work product doctrine pursuant to *California Code of Civil Procedure* §2018.030. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner responds that he will comply, in whole, and produce all responsive documents in his possession, custody or control, and to which no objection is being made. Discovery is ongoing and Petitioner reserves his right to supplement this response upon the subsequent

DEMAND FOR PRODUCTION NO. 70:

Produce any and all Documents or Communications evidencing Your transfer or lease or license of any property in excess of $1,000.00.

RESPONSE TO DEMAND NO. 70:

Objection. Petitioner objects to this Demand on the grounds that the scope of this demand is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing. Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has made a diligent search and reasonable inquiry in an effort to respond to this Demand. Petitioner will comply with this Demand in part and produce all responsive documents in his possession, custody or control, and to which no objection is being made. As to the documents responsive to this demand that Petitioner is not producing, said documents have been lost or destroyed.

DEMAND FOR PRODUCTION NO. 71:

If You object to any of the above requests or are withholding from production any Document,

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Los Angeles, CA 90024
(310) 473-0798

or any part of any Document, on the basis of privilege, privacy, confidentiality, or any related doctrines, including without limitation the work-product doctrine, produce a detailed privilege log containing the following information:

a. The identity and capacity of a11 individuals who authored, sent, or received each allegedly privileged document;

b. The document's date;

c. A brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies; and

d. The precise privilege or protection asserted.

RESPONSE TO DEMAND NO. 71:

Objection. Petitioner objects to this Demand on the grounds that the scope of this demand is overbroad, unduly burdensome and oppressive, and harassing. Petitioner further objects to the scope of this demand to the extent it is requesting documents that have already been requested in other demands herein and, on that basis, this demand is burdensome, oppressive and harassing.

Dated: 05/06/2024

LAW OFFICES OF KAPLAN, TROPE & GEKHT

By: Drorit B. Raiter

GARRY M. GEKHT, ESQ.
DRORIT BICK RAITER, ESQ
Attorney for Petitioner,
MAX D. BORENSTEIN

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
(310) 473-0798

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing PETITIONER'S RESPONSES TO RESPONDENT'S DEMAND FOR PRODUCTION OF DOCUMENTS (SET NO. TWO)

and know its contents.

☐ **CHECK APPLICABLE PARAGRAPHS**

☒ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an Officer ☐ a partner
☐ a of ,
a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.
☐ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for ,
a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.
Executed on May 6, 2024 , at LOS ANGELES , California.
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

MAX DAVID BORENSTEIN ..... Max Borenstein
May Borenstein (May 6, 2024 09:06 PDT)

TYPE OR PRINT NAME SIGNATURE

PROOF OF SERVICE

1013a (3) CCP Revised 2004

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of , State of California.
I am over the age of 18 and not a party to the within action; my business address is:

On , I served the foregoing document described as

on in this action
☐ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:
☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

☐ **BY MAIL**
☐ *I deposited such envelope in the mail at , California.
The envelope was mailed with postage thereon fully prepaid.
☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
Executed on , at , California.
☐ **(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.
Executed on , at , California.
☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
☐ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

..... _____

TYPE OR PRINT NAME SIGNATURE

*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

**(FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Boulevard, Suite 1250
Los Angeles, CA 90024
(310) 473-0798

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1250, Los Angeles, California 90024.

On May 6, 2024, I served the foregoing document described as **PETITIONER'S RESPONSES TO RESPONDENT'S DEMAND FOR PRODUCTION OF DOCUMENTS (SET NO. TWO),** on the interested parties in this action by placing [ ] the original [X] a true copy thereof enclosed in sealed envelope(s) addressed as follows:

J.R. Howell, Esq.
Law Office of J.R. Howell
1223 Wilshire Blvd.
P. O. Box 543
Santa Monica, CA 90403

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

[ ] BY CAUSING TO BE PERSONALLY SERVED: I caused delivery of such envelope by hand to the offices of the addressee.

[ ] VIA OVERNIGHT DELIVERY: : I enclosed the documents in an envelope or package by an overnight delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. The envelope or package was designated for next business day delivery, with all charges billed to sender.

[XX] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the following electronic notification addresses: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on May 6, 2024, at Los Angeles, California.

Janice R. Jackson
Janice R. Jackson

EXHIBIT

C

To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.

FL-145

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
J.R. Howell, Esq. (SBN 268086)
Law Office of J.R. Howell
1223 Wilshire Boulevard, P.O. Box 543
Santa Monica, CA 90403

TELEPHONE NO.: (202) 650-8867

ATTORNEY FOR (Name): Respondent, Sofiya Goldshteyn

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles

SHORT TITLE: Borenstein v. Goldshteyn

FORM INTERROGATORIES–FAMILY LAW

Asking Party: Respondent, Sofiya Goldshteyn

Answering Party: Petitioner, Max Borenstein

Set No.: Two

CASE NUMBER: 22STFL08826

Sec. 1. Instructions to Both Parties

The interrogatories on page 2 of this form are intended to provide for the exchange of relevant information without unreasonable expense to the answering party. They do not change existing law relating to interrogatories, nor do they affect the answering party's right to assert any privilege or make any objection. **Privileges must be asserted.**

Sec. 2. Definitions

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

(a) **Person** includes a natural person; a partnership; any kind of business, legal, or public entity; and its agents or employees.

(b) **Document** means all written, recorded,or graphic materials, however stored, produced, or reproduced.

(c) **Asset** or **property** includes any interest in real estate or personal property. It includes any interest in a pension, profit-sharing, or retirement plan.

(d) **Debt** means any obligation, including debts paid since the date of separation.

(e) **Support** means any benefit or economic contribution to the living expenses of another person, including gifts.

(f) If asked to **identify a person,** give the person's name, last known residence and business addresses, telephone numbers, and company affiliation at the date of the transaction referred to.

(g) If asked to **identify a document,** attach a copy of the document unless you explain why not. If you do not attach the copy, describe the document, including its date and nature, and give the name, address, telephone number, and occupation of the person who has the document.

Sec. 3. Instructions to the Asking Party

Check the box next to each interrogatory you want the answering party to answer.

Sec. 4. Instructions to the Answering Party

You must answer these interrogatories under oath within 30 days, in accordance with Code of Civil Procedure section 2030.260.

You must furnish all information you have or can reasonably find out, including all information (not privileged) from your attorneys or under your control. If you don't know, say so.

If an interrogatory is answered by referring to a document, the document must 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 a document to be attached to the response may also be attached to the *Schedule of Assets and Debts* (form FL-142), the document should be attached only to the response, and the form should refer to the response.

If an interrogatory cannot be answered completely, answer as much as you can, state the reason you cannot answer the rest, and state any information you have about the unanswered portion.

Sec. 5. Oath

Your answers to these interrogatories must be under oath, dated, and signed. Use the following statement **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)

Form Approved for Optional Use
Judicial Council of California
FL-145 [Rev. January 1, 2006]

Code of Civil Procedure,
§§ 2030.010–2030.410, 2033.710
www.courtinfo.ca.gov

☑ 1. **Personal history**. State your full name, current residence address and work address, social security number, any other names you have used, and the dates between which you used each name.

☑ 2. **Agreements.** Are there any agreements between you and your spouse or domestic partner, made before or during your marriage or domestic partnership or after your separation, that affect the disposition of **assets, debts,** or **support** in this proceeding? If your answer is yes, for each agreement state the date made and whether it was written or oral, and attach a copy of the agreement or describe its contents.

☑ 3. **Legal actions.** Are you a party or do you anticipate being a party to any legal or administrative proceeding other than this action? If your answer is yes, state your role and the name, jurisdiction, case number, and a brief description of each proceeding.

☑ 4. **Persons sharing residence.** State the name, age, and relationship to you of each **person** at your present address.

☑ 5. **Support provided others.** State the name, age, address, and relationship to you of each **person** for whom you have provided **support** during the past 12 months and the amount provided per month for each.

☑ 6. **Support received for others.** State the name, age, address, and relationship to you of each **person** for whom you have received **support** during the past 12 months and the amount received per month for each.

☑ 7. **Current income.** List all income you received during the past 12 months, its source, the basis for its computation, and the total amount received from each. Attach your last three paycheck stubs.

☑ 8. **Other income.** During the past three years, have you received cash or other property from any source not identified in item 7? If so, list the source, the date, and the nature and value of the property.

☑ 9. **Tax returns.** Attach copies of all tax returns and tax schedules filed by or for you in any jurisdiction for the past three calendar years.

☑ 10. **Schedule of assets and debts.** Complete the *Schedule of Assets and Debts* (form FL-142) served with these interrogatories.

☑ 11. **Separate property contentions.** State the facts that support your contention that an asset or debt is separate property.

☑ 12. **Property valuations.** During the past 12 months, have you received written offers to purchase or had written appraisals of any of the assets listed on your completed *Schedule of Assets and Debts?* If your answer is yes, **identify the document.**

☑ 13. **Property held by others.** Is there any **property** held by any third party in which you have any interest or over which you have any control? If your answer is yes, indicate whether the property is shown on the *Schedule of Assets and Debts* completed by you. If it is not, describe and identify each such asset, state its present value and the basis for your valuation, and **identify the person** holding the asset.

☑ 14. **Retirement and other benefits.** Do you have an interest in any disability, retirement, profit-sharing, or deferred compensation plan? If your answer is yes, **identify** each plan and provide the name, address, and telephone number of the administrator and custodian of records.

☑ 15. **Claims of reimbursement.** Do you claim the legal right to be reimbursed for any expenditures of your separate or community property? If your answer is yes, state all supporting facts.

☑ 16. **Credits.** Have you claimed reimbursement credits for payments of community debts since the date of separation? If your answer is yes, **identify** the source of payment, the creditor, the date paid, and the amount paid. State whether you have added to the debt since the separation.

☑ 17. **Insurance. Identify** each health, life, automobile, and disability insurance policy or plan that you now own or that covers you, your children, or your assets. State the policy type, policy number, and name of the company. **Identify** the agent and give the address.

☑ 18. **Health.** Is there any physical or emotional condition that limits your ability to work? If your answer is yes, state each fact on which you base your answer.

☐ 19. **Children's needs.** Do you contend that any of your children have any special needs? If so, identify the child with the need, the reason for the need, its cost, and its expected duration.

☑ 20. **Attorney fees.** State the total amount of attorney fees and costs incurred by you in this proceeding, the amount paid, and the source of the money paid. Describe the billing arrangements.

☑ 21. **Gifts.** List any gifts you have made without the consent of your spouse or domestic partner in the past 24 months, their values, and the recipients.

For your protection and privacy, please press the Clear This Form

THIS FORM SHOULD NOT BE FILED WITH THE COURT

FL-142

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name and Address)*:	TELEPHONE NO.:
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
PETITIONER: RESPONDENT:	
SCHEDULE OF ASSETS AND DEBTS ☐ **Petitioner's** ☐ **Respondent's**	CASE NUMBER:

— INSTRUCTIONS —

List all your known community and separate assets or debts. Include assets even if they are in the possession of another person, including your spouse. If you contend an asset or debt is separate, put P (for Petitioner) or R (for Respondent) in the first column (separate property) to indicate to whom you contend it belongs.

All values should be as of the date of signing the declaration unless you specify a different valuation date with the description. For additional space, use a continuation sheet numbered to show which item is being continued.

ITEM NO. ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
1. REAL ESTATE *(Give street addresses and attach copies of deeds with legal descriptions and latest lender's statement.)*			$	$
2. HOUSEHOLD FURNITURE, FURNISHINGS, APPLIANCES *(Identify.)*				
3. JEWELRY, ANTIQUES, ART, COIN COLLECTIONS, etc. *(Identify.)*				

Form Approved for Optional Use
Judicial Council of California
FL-142 [Rev. January 1, 2005]

Code of Civil Procedure, §§ 2030(c), 2033.5
www.courts.ca.gov

ITEM NO. ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
4. VEHICLES, BOATS, TRAILERS *(Describe and attach copy of title document.)*			$	$
5. SAVINGS ACCOUNTS *(Account name, account number, bank, and branch. Attach copy of latest statement.)*				
6. CHECKING ACCOUNTS *(Account name and number, bank, and branch. Attach copy of latest statement.)*				
7. CREDIT UNION, OTHER DEPOSIT ACCOUNTS *(Account name and number, bank, and branch. Attach copy of latest statement.)*				
8. CASH *(Give location.)*				
9. TAX REFUND				
10. LIFE INSURANCE WITH CASH SURRENDER OR LOAN VALUE *(Attach copy of declaration page for each policy.)*				

ITEM NO. ASSETS DESCRIPTION	SEP. PROP	DATE ACQUIRED	CURRENT GROSS FAIR MARKET VALUE	AMOUNT OF MONEY OWED OR ENCUMBRANCE
11. STOCKS, BONDS, SECURED NOTES, MUTUAL FUNDS *(Give certificate number and attach copy of the certificate or copy of latest statement.)*			$	$
12. RETIREMENT AND PENSIONS *(Attach copy of latest summary plan documents and latest benefit statement.)*				
13. PROFIT - SHARING, ANNUITIES, IRAS, DEFERRED COMPENSATION *(Attach copy of latest statement.)*				
14. ACCOUNTS RECEIVABLE AND UNSECURED NOTES *(Attach copy of each.)*				
15. PARTNERSHIPS AND OTHER BUSINESS INTERESTS *(Attach copy of most current K-1 form and Schedule C.)*				
16. OTHER ASSETS				
17. TOTAL ASSETS FROM CONTINUATION SHEET				
18. TOTAL ASSETS			$	$

ITEM NO. DEBTS—SHOW TO WHOM OWED	SEP. PROP	TOTAL OWING	DATE INCURRED
19. STUDENT LOANS *(Give details.)*		$	
20. TAXES *(Give details.)*			
21. SUPPORT ARREARAGES *(Attach copies of orders and statements.)*			
22. LOANS—UNSECURED *(Give bank name and loan number and attach copy of latest statement.)*			
23. CREDIT CARDS *(Give creditor's name and address and the account number. Attach copy of latest statement.)*			
24. OTHER DEBTS *(Specify.)*:			
25. TOTAL DEBTS FROM CONTINUATION SHEET			
26. TOTAL DEBTS		$	

27. ☐ *(Specify number)*: _____ pages are attached as continuation sheets.

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

Date: _____

_____ (TYPE OR PRINT NAME)

_____ (SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NUMBER	FOR COURT USE ONLY
J.R. Howell SBN 268086 **JR Howell & Associates** **1223 Wilshire Blvd. P.O. Box 543** **Santa Monica, CA 90403** ATTORNEY FOR **Respondent**	**(202) 650-8867**	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES (EFILING) 111 N Hill St. Los Angeles, CA 90012		
SHORT TITLE OF CASE: Borenstein, Max Davidvs Goldshteyn, Sofiya Alexandra		
DATE: TIME: DEP./DIV.		CASE NUMBER: 22STFL08826
Proof of Service (CCP 1011)		Ref. No. or File No: 00001

1. At the time of service I was at least 18 years of age and not a party to this action, and I served copies of the:
Form Interrogatories - Family Law; Blank Schedule of Assets and Debts

2. Party Served: **Garry M. Gekht, Esq.**

3. Address: **10866 Wilshire Blvd suite 1250 Los Angeles, CA 90024**

4. I served the Party named in item 2, by leaving the copies at the attorney's office, with or in the presence of:
Kimberly M. (Gender: F Age: 40 Height: 5'4 Weight: 120 Race: Black Hair: Brown Other: Eyes: Brown)
Receptionist

On: **2/29/2024** At: **02:26 PM**

(Business) In accordance with C.C.P. 1011 by leaving the notice or other papers with a receptionist or with a person having charge thereof

Person attempting service:
a. Name: **John Gonzalez**
b. Address: **1000 Corporate Center Drive Suite 110, Monterey Park, CA 91754**
c. Telephone number: **213-628-6338**
d. **The fee** for this service was: **80.00**
e. I am:
(3) [X] a registered California process server:
(i) [X] Independent Contractor
(ii) Registration No.: **2971**
(iii) County: **Los Angeles**

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

JANNEY & JANNEY
LEGAL SUPPORT SERVICE

John Gonzalez Date: **03/03/2024**

EXHIBIT

D

THE LAW OFFICE OF
JR HOWELL

1223 Wilshire Blvd.
Suite 543
Santa Monica, CA 90403
(202) 650-8867
jrhowell@jrhlegalstrategies.com

May 9, 2024

VIA E-Mail

Garry M. Gekht, Esq.
Law Offices of Kaplan & Gekht
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
garry@kaplangekht.com

Re: Marriage of Borenstein/Goldshteyn, LASC No. 22STFL08826 – Discovery Deficiencies

Garry:

This letter is an effort to meet and confer regarding deficiencies in Petitioner's Responses to Respondent's Form Interrogatories, Set Two; Petitioner's Schedule of Assets and Debts dated May 8, 2024; and Petitioner's Responses to Respondent's Requests for Production of Documents, Set Two.

We met and conferred to discuss discovery issues on February 26, 2024. On that day, we discussed, in part, the discovery deficiency letter I sent to your office dated February 12, 2024. In that letter, I requested revised answers to Petitioner's Responses to Respondent's Form Interrogatories, Set One. Additionally, I requested a cure to deficiencies in Petitioner's production in response to Respondent's Requests for Production of Documents, Set One.

In particular, I drew your attention to our focus on Petitioner's separate property claims, claims to reimbursement, and claims to credits, if any:

> We are requesting updated responses to the Form Interrogatories, including but not limited to Form Interrogatories Nos. 3, 6, 10, 11, 13, 14, 15, 16, and 21. To date, we have not seen a comprehensive statement on Petitioner's separate property claims; claims to reimbursement; and claims for credits; if any.

Ltr. From J.R. Howell to G. Gekht, Feb. 12, 2024.

Additionally, I highlighted a number of deficiencies with respect to Petitioner's document production.

On February 26, 2024, we met and conferred on these issues. What followed was a subsequent round of additional discovery. Petitioner's responses remain evasive, hidden behind a litany of rote objections, posed in bad faith, an analysis of which reveals that some appear to have been

cut and paste from documents used in other cases. Petitioner's pattern of evasion is hindering resolution of this matter.

Respondent is demanding once again that Petitioner provide non-evasive answers to her discovery requests, as set forth below:

Petitioner's Separate Property Contentions and Claims to Credits and Reimbursement

Petitioner Has Provided No Answer to Sofiya's Request for Petitioner's Separate Property Contentions, Claims to Reimbursement, and Claims to Credits

Respondent needs answers to Petitioner's separate property contentions and claims to credits and reimbursement. Without this information, the parties cannot have meaningful settlement talks. Nor will the parties be trial ready without this information.

Specifically, Respondent asked Petitioner to identify his separate property claims in Form Interrogatory No. 11, claims to reimbursement in Form Interrogatory No. 15, and claims to credits in response to Form Interrogatory No. 16.

Respondent requested documents regarding Petitioner's claims for reimbursement in Request for Production No. 43, claims to credits in Request for Production No. 44, and claims to separate property contentions in Request for Production No. 46. No documents of any kind were produced in response thereto. Further, Respondent is not in possession of documents responsive to Requests for Production Nos. 43, 44, or 46.

Although Petitioner states he has separate property claims, he fails to identify them.

With respect to Petitioner's claims to credits and reimbursements, Petitioner states in his interrogatory responses that he is claiming credit and reimbursement, but he fails to identify any dollar amount or any other information that would enable Respondent to evaluate the legitimacy of such claims or value thereof.

- Provide verified, revised answers to Form Interrogatory Nos. 11, 15, and 16 and Requests for Production Nos. 43, 44, and 46, as well as a responsive production of documents.

Petitioner has had nearly 2 years to compile this information since he filed his Petition on August 11, 2022. During the entirety of that time, he has had at his disposal any number of accountants, bankers, managers, and lawyers. There is no reason for this egregious delay.

Petitioner Continues to Hide The Community Intellectual Property Interests

Related to the above, is Petitioner's evasion with respect to his alleged separate property interests in the community's substantial intangible property.

Petitioner's Schedule of Assets and Debts dated May 6, 2024, identifies intellectual property in category 11 on page 3 thereof. There is no value listed nor is there a schedule of intellectual property identifying what that property consists of. This information was requested in Request for Production Nos. 15 and 62 and Form Interrogatory Nos. 10. Similarly, to the extent there was a separate property interest in any of this intellectual property, documents related thereto were requested in response to Request for Production No. 46 and an itemization thereof in response to Form Interrogator No. 11.

Produce a disclosure of intellectual property and/or intangible assets to comply with the disclosure requirements set forth by the Family Code § 2100, *et seq*. Revise the form interrogatory responses and responses to the requests for production.

- We need a comprehensive disclosure of intellectual property ***signed under the penalty of perjury***.
- We need a comprehensive disclosure of any separate property claims to any such intangible property.
- We need these answers incorporated into revised, verified responses to the Form Interrogatory Responses and Responses to Requests for Production of Documents.
- Produce the contract documents identified in Request for Production No. 10.
- Produce the documents related to rights, residuals, and royalties identified in Request for Production Nos. 15, 27, 30, 31, and 62.

Further, related to the issue of community intellectual property is Petitioner's response to Form Interrogatory No. 3. In that response, Petitioner identified certain documents that have not been produced to Respondent:

- Produce the "'Legal Hold Notice' from the litigation counsel at Warner Brothers discovery" received by Petitioner on February 26, 2024.

- Produce and identify the "formal notice to certain third parties in order to protect Petitioner's and Mr. Hecth's rights pertaining to the potential of a spinoff show from their television show, Winning Time," stated in Petitioner's Response to Form Interrogatory No. 3, page 4, lines 9-11.

- Produce and identify the contract referred to in response to Form Interrogatory No. 3, page 4 line 12 of Petitioner's Response to Respondent's Form Interrogatories.

All of these documents were requested in Request for Production No. 2. Produce them without delay.

Respondent is Experiencing Prejudice As A Result of Petitioner's Unreasonable Evasion

There is ongoing prejudice to Respondent as a result of Petitioner's ongoing evasive behavior. Not only is there an incalculable human cost to Respondent as a result of Petitioner's slow-walking this divorce, Petitioner's use of guerilla litigation tactics have hindered the ability of the parties to reach a negotiated end to these proceedings so that Sofiya can move on with her life. Petitioner's unreasonable evasions have dramatically increased litigation costs and attorney fees as Respondent tries to gain the information listed above both from Petitioner and via subpoenas through third parties—while managing Petitioner's frivolous objections to those very same subpoenas and discovery requests.

Petitioner filed his petitioner on August 11, 2022. It is unacceptable that as of the date of this letter, May 9, 2024, Petitioner is still hiding his separate property claims, claims to reimbursement, and claims to credits.

Petitioner must disclose his separate property contentions without further delay, along with his claims to credits and reimbursement.

Evasion of Information Related to Petitioner's Income

Petitioner has been similarly evasive as to his income. Petitioner has been obfuscating his sources of income since November of 2022. In so doing, he is concealing vital information relevant to the community's interest in his income as well as the distinct sources of revenue that belong to the community. Respondent needs a forthcoming response.

More specifically, Form Interrogatory Number 7 asked Petitioner to "list all income" received during the last 12 months. Petitioner's answer failed to identify a number. Further, Petitioner's response identified 8 documents to which Petitioner directed Respondent to find her own answer. It is a violation of Petitioner's duties under the Family Code to dump a pile of documents on Respondent and to tell her "go figure it out." Family Code § 2100, *et seq*., require disclosure, at the very least, of basic income information.

- Produce the income documents identified in Request for Production Nos. 2, 9, 10, 28, 30, 31, 49, 58,
- Produce the loan document identified in Request for Production No. 45;

Worse, Petitioner failed to produce the documents listed. And, of the listed documents, none of them identify Petitioner's income for the previous 5 months.

Cure these deficiencies and provide a non-evasive answer. To the extent appropriate, revise the answer to Form Interrogatory Number 8.

Failure to Produce Documents

Petitioner has failed to produce any documents other than the few partial and incomplete documents attached to his Schedule of Assets and Debts dated May 6, 2024.

- Produce Petitioner's documents.
- Produce documents related to the civil harassment complaint in Request for Production No. 65.

Remedies

This is not Respondent's first request for the categories of information set forth above. In many instances, Respondent has been requesting this information for nearly two years.

This letter is a good faith effort to meet and confer to obtain disclosure of this information so that Sofiya can be divorced and move on with her life.

I am placing Petitioner on notice that we intend to seek appropriate issue sanctions limiting Petitioner's claims and contentions set forth above.

Petitioner's Objections to the Requests for Production Are Frivolous and Revised Responses are Required

The Use of General Objections Is Improper.

Petitioner set forth a list of "general objections" that were incorporated into each response and asserted, in part, as a basis for withholding documents responsive to each request. Petitioner's use of general objections is improper and an abuse of the discovery process. Subdivision (a)(3) of CCP § 2031.210 and subdivision (b) of CCP § 2031.240(b) require separate objections to document demands, including identification "with particularity" of each document "to which an objection is being made," and further, a clear statement of the "specific grounds" for the objection. Petitioner's general objections fail for lack of specificity.

Particularly egregious is General Objection No. 1, which objects that all documents sought are irrelevant to the "***post-Judgment*** issues before the Court." That's not even an accurate statement of this case's procedural posture. These objections are so rote and boilerplate they were cut and pasted from a pre-existing set from a *different case*.
Provide revised written responses on or before May 23, 2024.

Petitioner's Objections of Relevance are Improper.

Petitioner objected to each request on the grounds that each one was either not relevant or not likely to lead to the discovery of admissible evidence.

The "relevance" objection is just wrong. The Evidence Code at § 210 defines "relevant evidence" as evidence "having ***any tendency*** in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." And, this includes "evidence relevant to the credibility of a witness or hearsay declarant." This includes evidence relevant "to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010.

Each request sought information relevant to the size or value of the estate at issue in the above-referenced matter and/or financial entitlements or claims to sums due to the community estate and/or information relevant to the Petitioner's claims to separate property interests relevant to the action. The requested documents also seek information relevant to the credibility of any of these claims and/or the parties asserting them.

The objection that Petitioner's taxes, his business contracts, and his claims to residual revenue are irrelevant to his divorce is an audacious abuse of the discovery process, as is the objection that similar financial related documents are irrelevant.

Provide a revised response that complies with the Civil Discovery Act on or before May 23, 2024.

Petitioner's Objection that Information is Already Within Respondent's Possession is Improper.

Petitioner objected to the requests to the extent that information is already within Respondent's possession.

In the first instance, Petitioner is not relieved of his production obligations because he asserts Respondent already has the information in question. *See* C.C.P. §§2031.210, 2031.220, 2031.230 and 2031.240. Even if documents have previously been produced in discovery by the responding party, Petitioner is to identify the documents (i.e., bates stamp number) in response to the request, which Petitioner has failed to do here.

Similarly frivolous is Petitioner's objection that requested documents are equally available to Respondent. That objection is improper. Unless the request is asking the responding party to obtain a public document or a statement from a third party, the objection on the grounds of "equal access" is improper. *See Bunnell v. Superior Court*, 254 Cal.App.2d 720, 723-724 (1967); *Holguin v. Superior Court*, 22 Cal.App.3d 812, 821 (1972); *see also* Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2019) 8:1062-64.

Provide a revised response that complies with the Civil Discovery Act on or before May 23, 2024.

Petitioner's Objections as to Vagueness, Ambiguity, and Lack of Intelligibility are Improper

Petitioner objected to each and every request on the basis of vagueness, ambiguity, lack of intelligibility, uncertainty, and because they were compound.

There is no rule preventing a party from issuing a compound request in a document demand. This objection is frivolous.

Moreover, "vague and ambiguous" is not a valid objection to a document demand unless "the ambiguity precludes an intelligent reply." *California Judges Benchbook: Civil Proceedings—Discovery* (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent.").

As drafted, Petitioner's rote assertions of vagueness and ambiguity are an abuse of the discovery process.

Petitioner's Objections of Overbreadth, Undue Burden, and Oppression are Improper.

Petitioner objected to each request on the basis that the requests themselves were overbroad, that responding to them posed an undue burden, and that the production would be oppressive.

The objection fails as a matter of law. There is a "burden" inherent in the discovery process in all lawsuits, and a general "objection" of burden is insufficient to deny a requesting party's rights under the Civil Discovery Act. *West Pico Furniture Co.* v. *Superior Court*, 56 Cal.App.2d 418 (1961).

As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in connection with discovery requests, responding counsel should:

> Avoid raising the "burdensome and oppressive" objection unless the facts are *truly unusual* (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, *state the reasons* for your objection. [Italics in original.]

Id.

The California Supreme Court has held that before a trial court may restrict a discovery method for being unduly burdensome, there must be evidence in the record to sustain that conclusion. Indeed, there must be evidence specifically quantifying the burden imposed on the responding party. *West Pico Furniture Co.* v. *Superior Court*, 56 Cal.App.2d 418, 418-419; *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 428.

Here, Petitioner's written response does not identify any type of oppression or burden, let alone an undue burden, and makes no effort to specify the same. Revise Petitioner's responses to comply with the Civil Discovery Act.

Petitioner's Privacy Objections Are Inadequate.

Petitioner asserted his right to privacy and/or the privacy rights of unspecified third parties in his responses. In so doing, Petitioner failed to meet his requirement to object with specificity under the Civil Discovery Act.

In addition, the California Supreme Court clarified in 2017 that the burden of establishing the right to privacy rests with the party asserting the objection. *See Williams v. Superior Court,* 3 Cal.5th 531, 552-59 (2017) ("Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion.").

Revise Petitioner's response to include the following required information in response to every request for which a privacy right is asserted:

1. The identity of the party whose privacy rights are asserted;
2. The legal basis for the origin of the particular privacy right at issue;
3. The specific document that is withheld on the basis of the particularized privacy right and sufficient information identifying that document to evaluate the validity of the privacy right asserted.

Provide this information on or before May 23, 2024.

To the extent Petitioner cannot meet this burden, produce any and all documents withheld on specious privacy objections immediately.

Privilege Log

Petitioner objected to Respondent's requests on the basis of the attorney-client privilege and stated that responsive documents were withheld in part on the basis of this objection.

Respondent requested a Privilege Log in Request for Production No. 71. Petitioner failed to produce a privilege log and even objected to furnishing one in response to Respondent's request. That objection is frivolous and Respondent demands that the objection be withdrawn, that a Privilege Log be produced not later than May 23, 2024, and that Petitioner provide revised written responses.

The failure to produce a Privilege Log is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the

claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*, 122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998).

Petitioner must produce a log containing the following information:

1. The identity and capacity of all individuals who authored, sent, or received each allegedly privileged document,
2. The document's date,
3. A brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and
4. The precise privilege or protection asserted.

See Bank of America, N.A. v. Superior Court of Orange County, 212 Cal.App.4th 1076, 151 Cal.Rptr.3d 526 (2013); *Friends of Hope Valley v. Frederick Co*., 268 F.R.D. 643, 650–651 (E.D. Cal. 2010); *see also* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 8:1474.5, p. 8H–27.

The failure to provide this information is a violation of the Civil Discovery Act. *See* CCP § 2031.240, subds. (c)(1) & (c)(2). Failing and refusing to provide this information is sanctionable conduct, as discussed in *Miller v. Hobbs*, *supra*.

Pursuant to § 402 of the Evidence Code, the court may conduct a preliminary fact hearing on whether the privilege even exists. When Petitioner provides the Privilege Log, do so bearing in mind that Respondent reserves the right to request such a hearing if appropriate.

Provide Respondent's Privilege Log on or before May 23, 2024.

Sincerely,

J.R. Howell

CC: Anne Grover, Esq.

EXHIBIT

E

Borenstein/Goldshteyn

From: Garry M. Gekht, Esq. (garry@ktg.law)

To: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com

Cc: gmgassist@kaplangekht.com

Date: Monday, June 3, 2024 at 12:16 PM EDT

Dear J.R.:

It has come to my attention that I have missed your letter of May 9, 2024, and therefore was unaware that a meet and confer letter was issued. Based on the foregoing, I accept and confirm your extension request in your e-mail correspondence of May 29, 2024.

Best,

GARRY M. GEKHT, ESQ.
LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
Tel 310-277-9009
Tel 310-473-0798
Fax 310-473-0625
www.kaplangekht.com
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EXHIBIT

F

Re: Munch

From: Garry M. Gekht, Esq. (garry@ktg.law)

To: agrover@gbfamilylawyers.com; jrhowell@jrhlegalstrategies.com; mbore@ktg.law

Date: Monday, June 17, 2024 at 12:27 PM EDT

Thank you, Anne.

I wanted to give you a brief update—while I sent you a large trove of documents previously following JR's May 9, 2024, letter, I wanted to address the issues outlined in the letter relating to the actual written responses by this past Friday. Unfortunately I contracted a severe case of food poisoning that required IV intervention and am still not back in the office. If I may have until this Friday to address same, I will give you a further 1-week extension on your MTC. Please confirm. If you require them sooner, I can try to work with my office to get same to you in the next couple of days, but I would appreciate the professional courtesy if possible.

Best,

GARRY M. GEKHT, ESQ.
LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
Tel 310-277-9009
Tel 310-473-0798
Fax 310-473-0625
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From: Anne Grover <agrover@gbfamilylawyers.com>
Date: Monday, June 17, 2024 at 9:23 AM
To: Garry M. Gekht, Esq. <garry@ktg.law>, J.R. Howell, Esq. <jrhowell@jrhlegalstrategies.com>, Borenstein Team <mbore@ktg.law>
Subject: RE: Munch

Garry: Thank you for your email. While Sofiya would have loved that time with Munch, she is not available.

Best,

Anne E. Grover

Anne E. Grover

(she/her)

Partner

Grover & Badalian

301-358-1813 x 402
240-658-6463
agrover@gbfamilylawyers.com
gbfamilylawyers.com
11 N Washington St #630, Rockville, MD 20850

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From: Garry M. Gekht, Esq. <garry@ktg.law>
Sent: Monday, June 17, 2024 11:29 AM
To: J.R. Howell, Esq. <jrhowell@jrhlegalstrategies.com>; Anne Grover <agrover@gbfamilylawyers.com>; Borenstein Team <mbore@ktg.law>
Subject: Munch

Hi JR/Anne:

Please let me know if Sofiya would like Munch from Wednesday after his walk return to Max on Friday, all transfers via the dog walker. Please let me know by tomorrow am. Otherwise Max will board Munch with the dog walker. Thank you.

EXHIBIT

G

Re: IRMO Borenstein/Goldshteyn - Petitioner's Discovery Deficiencies

From: Garry M. Gekht, Esq. (garry@ktg.law)

To: jrhowell@jrhlegalstrategies.com; agrover@gbfamilylawyers.com

Cc: drorit@ktg.law; Sara@ktg.law

Date: Monday, June 17, 2024 at 03:03 PM EDT

Hi JR:

I have no problem with that, but please then give me till Monday so I'm not scrambing—I am at home on my laptop and am getting in five e-mails for every one I send out.

Best,

GARRY M. GEKHT, ESQ.
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Los Angeles, CA 90024
Tel 310-277-9009
Tel 310-473-0798
Fax 310-473-0625
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From: J.R. Howell, Esq. <jrhowell@jrhlegalstrategies.com>
Date: Monday, June 17, 2024 at 12:00 PM
To: Anne Grover <agrover@gbfamilylawyers.com>, Garry M. Gekht, Esq. <garry@ktg.law>
Cc: Drorit Bick Raiter, Esq. <drorit@ktg.law>, Sara Tavakoli, Esq. <Sara@ktg.law>
Subject: Re: IRMO Borenstein/Goldshteyn - Petitioner's Discovery Deficiencies

Garry,

Per your message below, we had previously agreed to a mutual extension to the statutory motion to compel deadline up to and including June 24th. Your message below would extend that further to July 1st. Given the holiday, can we agree to push that to July 8?

J.R. Howell, Esq.
202-650-8867

jrhowell@jrhlegalstrategies.com

****

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****

On Monday, June 17, 2024, 09:27:28 AM PDT, Garry M. Gekht, Esq. <garry@ktg.law> wrote:

Thank you, Anne.

I wanted to give you a brief update—while I sent you a large trove of documents previously following JR's May 9, 2024, letter, I wanted to address the issues outlined in the letter relating to the actual written responses by this past Friday. Unfortunately I contracted a severe case of food poisoning that required IV intervention and am still not back in the office. If I may have until this Friday to address same, I will give you a further 1-week extension on your MTC. Please confirm. If you require them sooner, I can try to work with my office to get same to you in the next couple of days, but I would appreciate the professional courtesy if possible.

Best,

GARRY M. GEKHT, ESQ.

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From: J.R. Howell, Esq. <jrhowell@jrhlegalstrategies.com>

To: Garry M. Gekht, Esq. <garry@ktg.law>

Cc: agrover@gbfamilylawyers.com <agrover@gbfamilylawyers.com>; Drorit Bick Raiter, Esq. <drorit@ktg.law>; Sara Tavakoli, Esq. <sara@ktg.law>; Garry M. Gekht Assistant <gmgassist@kaplangekht.com>

Sent: Wednesday, May 29, 2024, 09:45:55 AM PDT

Subject: Re: IRMO Borenstein/Goldshteyn - Petitioner's Discovery Deficiencies

Garry,

Per your request, we are more than willing to extend you the courtesy of an extension of the deadline to file a motion to compel further responses up through and inclusive of June 24, 2024, and request a mutual extension with respect to Respondent's deadline to file a motion to compel with respect to Petitioner's deficient discovery responses and failure to produce responsive documents therewith.

As I stated in my prior message, Respondent wants to address Petitioner's concerns regarding discovery matters and we will provide a supplemental production of documents along with supplemental written responses to the form interrogatories and the document demands. This supplement will be in addition to documents already in Petitioner's possession that are bates numbered SAG000001-SAG002627, which were produced to Petitioner's prior counsel. We will ensure that you have copies of these documents in the supplemental production. However, your deadline of June 4th does not work with our schedules, particularly in light of the 128 document demands propounded upon Respondent, covering a period of more than 10 years. We will provide you the supplemental responses and supplemental production on or before June 14th, 2024.

If Petitioner continues to express concerns with respect to Respondent's written responses and/or document production, we can agree to a further extension of the motion to compel deadline to allow our respective sides the courtesy of sufficient time to meaningfully evaluate one another's responses and productions.

I would like each party to have sufficient time to meet and confer telephonically and also believe a discovery referee is necessary to timely address discovery disputes. In light of Petitioner's substantial and continuing discovery deficiencies, some of which were

detailed in my letter of May 9, 2024, it appears necessary to utilize a discovery referee. I note that Petitioner failed to respond in any way to my letter of May 9, 2024, and has failed to cure a single deficiency noted therein.

Please let me know no later than the end of this week (close of business on Friday, May 31, 2024) if Petitioner is agreeable to mutual extensions for filing any motions to compel, as well as whether Petitioner agrees to jointly request a discovery referee. Please also identify when we can expect Petitioner's responsive documents and a response to my meet and confer letter regarding Petitioner's discovery deficiencies dated May 9, 2024.

J.R. Howell, Esq.
202-650-8867

jrhowell@jrhlegalstrategies.com

****

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****

EXHIBIT

H

Re: Discovery--Meet and Confer

From: Garry M. Gekht, Esq. (garry@ktg.law)

To: jrhowell@jrhlegalstrategies.com

Cc: agrover@gbfamilylawyers.com; mbore@ktg.law

Date: Wednesday, July 24, 2024 at 06:54 PM EDT

So agreed; thank you. Please please please copy mbore@ktg.law on all correspondence and service.

GARRY M. GEKHT, ESQ.
LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd., Suite 1250
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From: J.R. Howell <jrhowell@jrhlegalstrategies.com>
Sent: Wednesday, July 24, 2024 3:53 PM
To: Garry M. Gekht, Esq. <garry@ktg.law>
Cc: Anne Grover <agrover@gbfamilylawyers.com>
Subject: Re: Discovery--Meet and Confer

We can agree to a mutual extension.

J.R. Howell
202-650-8867
jrhowell@jrhlegalstrategies.com

****

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****

On Wednesday, July 24, 2024 at 06:26:59 PM EDT, Garry M. Gekht, Esq. <garry@ktg.law> wrote:

Dear Counsel:

Drorit Raiter, who is handling the document production and discovery in this case in my office, was unexpectedly hospitalized last week and is still under medical care and not back to work in any meaningful capacity. I am requesting a 2 week extenion on our deadline to file an MTC related to Sofiya's document production. Absent agreement, I will request same from the Court which I do not believe to be an issue given Drorit's hospitalization.

best,

GARRY M. GEKHT, ESQ.
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EXHIBIT

I

LAW OFFICE OF
J.R.HOWELL
2219 Main Street, Suite 436, Santa Monica, CA 90405

March 7, 2025

VIA E-Mail

Garry M. Gekht, Esq.
Law Offices of Kaplan & Gekht
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
garry@kaplangekht.com

Re: Marriage of Borenstein/Goldshteyn, LASC No. 22STFL08826 – Discovery Deficiencies

Garry:

This letter is an effort to meet and confer regarding deficiencies in Discovery after the Petitioner issued a Notice of Discovery Recall on January 23, 2025. To date, no additional documents have been produced. The last Discovery Deficiencies letter dated May 9, 2024 stated the outstanding documents include the Petitioner's Responses to Respondent's Form Interrogatories, Set Two; Petitioner's Schedule of Assets and Debts dated May 8, 2024; and Petitioner's Responses to Respondent's Requests for Production of Documents, Set Two.

We met and conferred to discuss discovery issues on February 26, 2024. On that day, we discussed, in part, the discovery deficiency letter I sent to your office dated February 12, 2024. In that letter, I requested revised answers to Petitioner's Responses to Respondent's Form Interrogatories, Set One. Additionally, I requested a cure to deficiencies in Petitioner's production in response to Respondent's Requests for Production of Documents, Set One.

In particular, I drew your attention to our focus on Petitioner's separate property claims, claims to reimbursement, and claims to credits, if any:

> We are requesting updated responses to the Form Interrogatories, including but not limited to Form Interrogatories Nos. 3, 6, 10, 11, 13, 14, 15, 16, and 21. To date, we have not seen a comprehensive statement on Petitioner's separate property claims; claims to reimbursement; and claims for credits; if any.

Ltr. From J.R. Howell to G. Gekht, Feb. 12, 2024.

Additionally, I highlighted a number of deficiencies with respect to Petitioner's document production.

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On February 26, 2024, we met and conferred on these issues. What followed was a subsequent round of additional discovery. Petitioner's responses remain evasive, hidden behind a litany of rote objections, posed in bad faith, an analysis of which reveals that some appear to have been cut and paste from documents used in other cases. Petitioner's pattern of evasion is hindering resolution of this matter.

In addition to the last Discovery deficiency letter, we have not received the following information/documents:

1. Petitioner's communications in forms of emails or text messages (SMS, Imessage, Whatsapp, Direct Messages, various Social Media platform communications, etc.) in response to Sofiya's requests.
2. His journal entries, which contain evidence of his state of mind with respect to the date of separation. We seek copies of every page of his handwritten journal between April 6, 2022, and August 23, 2022. Additionally we seek copies of every page of his handwritten journal during the 60 day period prior to April 6, 2022. All journal entries need to be provided regardless of what the Petitioner deems relevant information. Even the lack of entries pertaining to the facts related to a breakdown of the marriage is probative of the issue.
3. All documents relevant to Petitioner's claims to a separate interest in the various Overall Team Agreements and all documents relevant to Petitioner's separate claims to intellectual property, residuals, and royalties.
4. The demand letter sent on Petitioner's behalf in 2024 pertaining to his right and interest in *Winning Time: Rise of the Lakers Dynasty*.
5. All documents which are identified in response to Form Interrogatory (Set Two) No. 3.
6. All attorney and expert invoices including all retainers and agreements.
7. All Petitioner's loan applications as requested in the Request of Production of Documents.
8. A copy of the original and unedited video of Petitioner's entry into Sofiya's on November 12, 2022. The prior version was produced in April of 2023, but was edited with a time gap. We need the production of the original video without any modifications.
9. Any and all contracts or other documents Petitioner claims are relevant to his claims to the unimplanted embryos.
10. Production of the Petitioner's privilege log.

Respondent is demanding once again that Petitioner provide non-evasive answers to her discovery requests, as set forth below:

<u>Petitioner's Separate Property Contentions and Claims to Credits and Reimbursement</u>

<u>Petitioner Has Provided No Answer to Sofiya's Request for Petitioner's Separate Property Contentions, Claims to Reimbursement, and Claims to Credits</u>

Respondent needs answers to Petitioner's separate property contentions and claims to credits and reimbursement. Without this information, the parties cannot have meaningful settlement talks. Nor will the parties be trial ready without this information.

Specifically, Respondent asked Petitioner to identify his separate property claims in Form Interrogatory No. 11, claims to reimbursement in Form Interrogatory No. 15, and claims to credits in response to Form Interrogatory No. 16.

Respondent requested documents regarding Petitioner's claims for reimbursement in Request for Production No. 43, claims to credits in Request for Production No. 44, and claims to separate property contentions in Request for Production No. 46. No documents of any kind were produced in response thereto. Further, Respondent is not in possession of documents responsive to Requests for Production Nos. 43, 44, or 46.

Although Petitioner states he has separate property claims, he fails to identify them.

With respect to Petitioner's claims to credits and reimbursements, Petitioner states in his interrogatory responses that he is claiming credit and reimbursement, but he fails to identify any dollar amount or any other information that would enable Respondent to evaluate the legitimacy of such claims or value thereof.

- Provide verified, revised answers to Form Interrogatory Nos. 11, 15, and 16 and Requests for Production Nos. 43, 44, and 46, as well as a responsive production of documents.

Petitioner has had over 2 years to compile this information since he filed his Petition on August 11, 2022. During the entirety of that time, he has had at his disposal any number of accountants, bankers, managers, and lawyers. There is no reason for this egregious delay.

Petitioner Continues to Hide The Community Intellectual Property Interests

Related to the above is Petitioner's evasion with respect to his alleged separate property interests in the community's substantial intangible property.

Petitioner's Schedule of Assets and Debts dated May 6, 2024, identifies intellectual property in category 11 on page 3 thereof. There is no value listed nor is there a schedule of intellectual property identifying what that property consists of. This information was requested in Request for Production Nos. 15 and 62 and Form Interrogatory Nos. 10. Similarly, to the extent there was a separate property interest in any of this intellectual property, documents related thereto were requested in response to Request for Production No. 46 and an itemization thereof in response to Form Interrogator No. 11.

Produce a disclosure of intellectual property and/or intangible assets to comply with the disclosure requirements set forth by the Family Code § 2100, *et seq*. Revise the form interrogatory responses and responses to the requests for production.

- We need a comprehensive disclosure of intellectual property ***signed under the penalty of perjury***.
- We need a comprehensive disclosure of any separate property claims to any such intangible property.

- We need these answers incorporated into revised, verified responses to the Form Interrogatory Responses and Responses to Requests for Production of Documents.
- Produce the contract documents identified in Request for Production No. 10.
- Produce the documents related to rights, residuals, and royalties identified in Request for Production Nos. 15, 27, 30, 31, and 62.

Further, related to the issue of community intellectual property is Petitioner's response to Form Interrogatory No. 3. In that response, Petitioner identified certain documents that have not been produced to Respondent:

- Produce the "'Legal Hold Notice' from the litigation counsel at Warner Brothers discovery" received by Petitioner on February 26, 2024.

- Produce and identify the "formal notice to certain third parties in order to protect Petitioner's and Mr. Hecth's rights pertaining to the potential of a spinoff show from their television show, Winning Time," stated in Petitioner's Response to Form Interrogatory No. 3, page 4, lines 9-11.

- Produce and identify the contract referred to in response to Form Interrogatory No. 3, page 4 line 12 of Petitioner's Response to Respondent's Form Interrogatories.

All of these documents were requested in Request for Production No. 2. Produce them without delay.

Respondent is Experiencing Prejudice As A Result of Petitioner's Unreasonable Evasion

There is ongoing prejudice to Respondent as a result of Petitioner's ongoing evasive behavior. Not only is there an incalculable human cost to Respondent as a result of Petitioner's slow-walking this divorce, Petitioner's use of guerilla litigation tactics have hindered the ability of the parties to reach a negotiated end to these proceedings so that Sofiya can move on with her life. Petitioner's unreasonable evasions have dramatically increased litigation costs and attorney fees as Respondent tries to gain the information listed above both from Petitioner and via subpoenas through third parties—while managing Petitioner's frivolous objections to those very same subpoenas and discovery requests.

Petitioner filed his petitioner on August 11, 2022. It is unacceptable that as of the date of this letter, March 7, 2025, Petitioner is still hiding his separate property claims, claims to reimbursement, and claims to credits.

Petitioner must disclose his separate property contentions without further delay, along with his claims to credits and reimbursement.

Evasion of Information Related to Petitioner's Income

Petitioner has been similarly evasive as to his income. Petitioner has been obfuscating his sources of income since November of 2022. In so doing, he is concealing vital information

relevant to the community's interest in his income as well as the distinct sources of revenue that belong to the community. Respondent needs a forthcoming response.

More specifically, Form Interrogatory Number 7 asked Petitioner to "list all income" received during the last 12 months. Petitioner's answer failed to identify a number. Further, Petitioner's response identified 8 documents to which Petitioner directed Respondent to find her own answer. It is a violation of Petitioner's duties under the Family Code to dump a pile of documents on Respondent and to tell her "go figure it out." Family Code § 2100, *et seq*., require disclosure, at the very least, of basic income information.

- Produce the income documents identified in Request for Production Nos. 2, 9, 10, 28, 30, 31, 49, 58,
- Produce the loan document identified in Request for Production No. 45;

Worse, Petitioner failed to produce the documents listed. And, of the listed documents, none of them identify Petitioner's income for the previous 5 months.

Cure these deficiencies and provide a non-evasive answer. To the extent appropriate, revise the answer to Form Interrogatory Number 8.

Failure to Produce Documents

Petitioner has failed to produce any documents other than the few partial and incomplete documents attached to his Schedule of Assets and Debts dated May 6, 2024.

- Produce Petitioner's documents.
- Produce documents related to the civil harassment complaint in Request for Production No. 65.

Remedies

This is not Respondent's first request for the categories of information set forth above. In many instances, Respondent has been requesting this information for over two years.

This letter is a good faith effort to meet and confer to obtain disclosure of this information so that Sofiya can be divorced and move on with her life.

I am placing Petitioner on notice that we intend to seek appropriate issue sanctions limiting Petitioner's claims and contentions set forth above.

Petitioner's Objections to the Requests for Production Are Frivolous and Revised Responses are Required

The Use of General Objections Is Improper.

Petitioner set forth a list of "general objections" that were incorporated into each response and asserted, in part, as a basis for withholding documents responsive to each request. Petitioner's use of general objections is improper and an abuse of the discovery process. Subdivision (a)(3) of CCP § 2031.210 and subdivision (b) of CCP § 2031.240(b) require separate objections to document demands, including identification "with particularity" of each document "to which an objection is being made," and further, a clear statement of the "specific grounds" for the objection. Petitioner's general objections fail for lack of specificity.

Particularly egregious is General Objection No. 1, which objects that all documents sought are irrelevant to the "***post-Judgment*** issues before the Court." That's not even an accurate statement of this case's procedural posture. These objections are so rote and boilerplate they were cut and pasted from a pre-existing set from a *different case*.
Provide revised written responses on or before April 3, 2025.

Petitioner's Objections of Relevance are Improper.

Petitioner objected to each request on the grounds that each one was either not relevant or not likely to lead to the discovery of admissible evidence.

The "relevance" objection is just wrong. The Evidence Code at § 210 defines "relevant evidence" as evidence "having ***any tendency*** in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." And, this includes "evidence relevant to the credibility of a witness or hearsay declarant." This includes evidence relevant "to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010.

Each request sought information relevant to the size or value of the estate at issue in the above-referenced matter and/or financial entitlements or claims to sums due to the community estate and/or information relevant to the Petitioner's claims to separate property interests relevant to the action. The requested documents also seek information relevant to the credibility of any of these claims and/or the parties asserting them.

The objection that Petitioner's taxes, his business contracts, and his claims to residual revenue are irrelevant to his divorce is an audacious abuse of the discovery process, as is the objection that similar financial related documents are irrelevant.

Provide a revised response that complies with the Civil Discovery Act on or before April 3, 2025.

Petitioner's Objection that Information is Already Within Respondent's Possession is Improper.

Petitioner objected to the requests to the extent that information is already within Respondent's possession.

In the first instance, Petitioner is not relieved of his production obligations because he asserts Respondent already has the information in question. *See* C.C.P. §§2031.210, 2031.220, 2031.230 and 2031.240. Even if documents have previously been produced in discovery by the responding party, Petitioner is to identify the documents (i.e., bates stamp number) in response to the request, which Petitioner has failed to do here.

Similarly frivolous is Petitioner's objection that requested documents are equally available to Respondent. That objection is improper. Unless the request is asking the responding party to obtain a public document or a statement from a third party, the objection on the grounds of "equal access" is improper. *See Bunnell v. Superior Court*, 254 Cal.App.2d 720, 723-724 (1967); *Holguin v. Superior Court*, 22 Cal.App.3d 812, 821 (1972); *see also* Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2019) 8:1062-64.

Provide a revised response that complies with the Civil Discovery Act on or before April 3, 2025.

Petitioner's Objections as to Vagueness, Ambiguity, and Lack of Intelligibility are Improper

Petitioner objected to each and every request on the basis of vagueness, ambiguity, lack of intelligibility, uncertainty, and because they were compound.

There is no rule preventing a party from issuing a compound request in a document demand. This objection is frivolous.

Moreover, "vague and ambiguous" is not a valid objection to a document demand unless "the ambiguity precludes an intelligent reply." *California Judges Benchbook: Civil Proceedings—Discovery* (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent.").

As drafted, Petitioner's rote assertions of vagueness and ambiguity are an abuse of the discovery process.

Petitioner's Objections of Overbreadth, Undue Burden, and Oppression are Improper.

Petitioner objected to each request on the basis that the requests themselves were overbroad, that responding to them posed an undue burden, and that the production would be oppressive.

The objection fails as a matter of law. There is a "burden" inherent in the discovery process in all lawsuits, and a general "objection" of burden is insufficient to deny a requesting party's rights under the Civil Discovery Act. *West Pico Furniture Co.* v. *Superior Court*, 56 Cal.App.2d 418 (1961).

As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in connection with discovery requests, responding counsel should:

> Avoid raising the "burdensome and oppressive" objection unless the facts are *truly unusual* (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, *state the reasons* for your objection. [Italics in original.]

Id.

The California Supreme Court has held that before a trial court may restrict a discovery method for being unduly burdensome, there must be evidence in the record to sustain that conclusion. Indeed, there must be evidence specifically quantifying the burden imposed on the responding party. *West Pico Furniture Co.* v. *Superior Court,* 56 Cal.App.2d 418, 418-419; *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 428.

Here, Petitioner's written response does not identify any type of oppression or burden, let alone an undue burden, and makes no effort to specify the same. Revise Petitioner's responses to comply with the Civil Discovery Act.

Petitioner's Privacy Objections Are Inadequate.

Petitioner asserted his right to privacy and/or the privacy rights of unspecified third parties in his responses. In so doing, Petitioner failed to meet his requirement to object with specificity under the Civil Discovery Act.

In addition, the California Supreme Court clarified in 2017 that the burden of establishing the right to privacy rests with the party asserting the objection. *See Williams v. Superior Court,* 3 Cal.5th 531, 552-59 (2017) ("Courts must instead place the burden on the party asserting a privacy interest to establish its extent and the seriousness of the prospective invasion.").

Revise Petitioner's response to include the following required information in response to every request for which a privacy right is asserted:

1. The identity of the party whose privacy rights are asserted;
2. The legal basis for the origin of the particular privacy right at issue;
3. The specific document that is withheld on the basis of the particularized privacy right and sufficient information identifying that document to evaluate the validity of the privacy right asserted.

Provide this information on or before April 3, 2025.

To the extent Petitioner cannot meet this burden, produce any and all documents withheld on specious privacy objections immediately.

Privilege Log

Petitioner objected to Respondent's requests on the basis of the attorney-client privilege and stated that responsive documents were withheld in part on the basis of this objection.

Respondent requested a Privilege Log in Request for Production No. 71. Petitioner failed to produce a privilege log and even objected to furnishing one in response to Respondent's request. That objection is frivolous and Respondent demands that the objection be withdrawn, that a Privilege Log be produced not later than April 3, 2025, and that Petitioner provide revised written responses.

The failure to produce a Privilege Log is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*, 122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998).

Petitioner must produce a log containing the following information:

1. The identity and capacity of all individuals who authored, sent, or received each allegedly privileged document,
2. The document's date,
3. A brief description of the document and its contents or subject matter sufficient to determine whether the privilege applies, and
4. The precise privilege or protection asserted.

See Bank of America, N.A. v. Superior Court of Orange County, 212 Cal.App.4th 1076, 151 Cal.Rptr.3d 526 (2013); *Friends of Hope Valley v. Frederick Co*., 268 F.R.D. 643, 650–651 (E.D. Cal. 2010); *see also* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2015) ¶ 8:1474.5, p. 8H–27.

The failure to provide this information is a violation of the Civil Discovery Act. *See* CCP § 2031.240, subds. (c)(1) & (c)(2). Failing and refusing to provide this information is sanctionable conduct, as discussed in *Miller v. Hobbs*, *supra*.

Pursuant to § 402 of the Evidence Code, the court may conduct a preliminary fact hearing on whether the privilege even exists. When Petitioner provides the Privilege Log, do so bearing in mind that Respondent reserves the right to request such a hearing if appropriate.

Provide Respondent's Privilege Log on or before April 3, 2025.

Sincerely,

J.R. Howell

CC: Anne Grover, Esq.
Jason Koch, Esq.

EXHIBIT

J

KAPLAN, TROPE & GEKHT
ATTORNEYS AT LAW

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°OF COUNSEL

March 17, 2025

VIA E-MAIL ONLY
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Email: jrhowell@jrhlegalstrategies.com

Re: *Marriage of Borenstein/Goldshteyn*
LASC Case No.: 22STFL08826

Dear J.R.:

I write responsive to your correspondence of March 7, 2025.

You state at the beginning of your letter that "to date, no additional documents have been produced." While the discovery stay was in place, you had free reign to receive documents from our forensic accountants, which you and your forensic did. At no point after issuing the discovery recall did you request any further documents until your March 7, 2025 letter, such that I am unclear as to what "additional documents" you thought were necessary to produce absent your identification of same. I address the specific contentions in your letter below:

ALLEGED DISCOVERY DEFICIENCIES

Your letter purports to take issue with year-old discovery, specifically, Max's Responses to Sofiya's Form Interrogatories Set Two—which was served on my office on March 1, 2024—and Sofiya's Demand for Production, Set Two—which was served on my office on March 14, 2024 (collectively, "Sofiya's discovery").[1] Pursuant to an agreed-upon extension, my office served Max's responses to both items of discovery on May 6, 2024 (collectively, "Max's Responses").

On May 9, 2024, you sent us a meet and confer letter alleging deficiencies with Max's Responses, which we subsequently addressed in our responsive letter of June 24, 2024. In the nearly nine months that have elapsed since that exchange, we have received no further meet and confer

[1] Your letter also purports to take issue with "Petitioner's Schedule of Assets and Debts dated May 8, 2024". However, given that a Schedule of Assets and Debts is not, in and of itself, an item of discovery, I can only assume that you are referring to the Schedule of Assets and Debts served in response to Item 10 of Respondent's Form Interrogatories, Set Two, on May 6, 2024.

correspondence from you regarding Max's Responses—despite our offices exchanging *no fewer than 65 letters on other issues* during that time.

Contrary to the understanding—or lack thereof—reflected in your letter, recalling a discovery stay serves only to re-start discovery proceedings as they existed at the time the stay went into effect—in this case, on November 13, 2025. Such a recall does not serve to re-start the discovery process in toto, nor does it operate to circumvent the motion to compel deadlines set forth in Code of Civil Procedure sections 2030.300 and 2031.300. **Therefore, on July 8, 2024, you WAIVED Sofiya's ability to seek any relief related to the alleged deficiencies in Max's responses by failing to file a motion to compel (see CCP 2031.10(c) and 2015.050).**

If Sofiya found Max's objections objectionable, she had the service of not one but two law firms at her disposal to seek whatever relief necessary as it relates to her perceived deficiencies with Max's production. She failed to do so at all and Max's production is deemed complete as of July 8, 2024 and in full satisfaction of the demand. Your attempt to resurrect discovery that has been settled for months and months is not well taken and will be brought to the attention of the Court on the issue of attorneys' fees and sanctions.

You next allege that Sofiya has no information about Max's claims about separate property contentions and credits and reimbursements. This claim is categorically false—not only has Sofiya been provided the full schedules of Max's credits and reimbursements as contained in the Post Separation Accounting sent to you and your forensic accountants and updated continuously, with all back up documentation also provided, but you (or, specifically, your co-counsel) confirmed as much on the record in open Court when you confirmed that the forensic reports are complete for both sides.

You next fault Max for failing to provide a value for intellectual property. I am aware of no such requirement and you fail to provide any authority to support your contention that Max has the responsibility to have it valued. In my experience, intellectual property of the type held by the parties is usually treated as follows in the family law context: Max receives the income stream and Sofiya receives her ½ share of any community property intellectual property net of commissions and taxes. The amount of time you are spending on intellectual property and the appurtenant rate of burn on the professional fees related thereto likewise wholly fails to appreciate that intellectual property of the type held by the parties provides for an decreasing income stream the more time goes on—Max doesn't hold IP rights to many of the larger projects he worked on, and the cost you are having Sofiya incur on this issue is incommensurate with any perceived benefit, a fact, again, that will be brought to the attention of the Court on the issue of attorneys' fees and sanctions in this matter.

You finally identified three documents in your letter (on Page 4), that you claim were not produced—to wit a "Legal Hold Notice" of February 26, 2025 and two documents identified in Max's Responses to Form Interrogatory No. 3. While Max had no obligation to produce same responsive to the Form Interrogatories, I will request those documents and produce them to you (I assume the contract has already been produced to you, but I will confirm that).

Your notice that you intend to seek "issue sanctions" is likewise not well taken—your ability to seek ANY sanctions relevant to concluded discovery is, as this letter explained earlier, long precluded—see, for example, *New Albertsons, Inc. v. Superior Court (2008) 168Cal.App.4th 1403*.

FRUSTRATION OF SETTLEMENT

I have no ability to respond to your hyperbolic claims related to the "incalculable human cost" of Max's "slow walking this divorce," as your claims are not supported by the record, which clearly shows that there is one party—Sofiya—who has continually delayed the matter from resolving by cancelling two mediations, filing frivolous motions and making claims unsupported by either the record or the law, the most recent example of which is the contents of your letter to which this letter responds, alleging deficiencies in discovery that had long been concluded and for which relief is precluded by the Code.

I find your letter's repeated assertions that "the parties cannot have meaningful settlement talks" without the allegedly deficient documents specious, at best. If that were truly the case, I am baffled by your agreement to proceed with multiple settlement conferences in the past nine months. It is clear that your letter is nothing more than the latest in a series of attempted tactical maneuvers whose only purpose is to drive up the Parties' costs and delay the resolution of this case—objectives which constitute sanctionable conduct under Family Code section 271. This ongoing bait-and-switch is not well received and will be brought to the Court's attention when we litigate the issues of attorney's fees and sanctions.

In light of the impending May 1, 2025 deadline to propound and respond to written discovery, I suggest that you focus your efforts on inventorying the documents provided by our office and exchanged between the forensic accountants. If such review indicates that any information remains outstanding, our office will, of course, facilitate the production of any and all documents in Max's possession, custody, and control to which Sofiya is entitled.

Very truly yours,

Garry M. Gekht, Esq.
Of the Law Offices of Kaplan, Trope & Gekht

GMG:cj
cc: Anne E. Grover, Esq. (agrover@gbfamilylawyers.com)
Jason P. Koch, Esq. (jason@jasonkochlaw.com)

EXHIBIT

K

Received: 10/8/2024 3:45 PM

GARRY M. GEKHT, ESQ. (SBN 321424)
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Attorneys for Petitioner,
MAX DAVID BORENSTEIN

Electronically FILED
Superior Court of California
County of Los Angeles
10/9/2024 9:30 AM
David W. Slayton
Executive Officer/Clerk of Court,
By A. Narayan, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In re the Marriage of: Petitioner: MAX DAVID BORENSTEIN and Respondent: SOFIYA ALEXANDRA GOLDSHTEYN	CASE NO. 22STFL08826 [*Assigned to the Honorable Judge Nord, Dept. "2B"*] **STIPULATION AND ORDER RE ATTORNEY/EXPERT FEES AND COSTS, VOLUNTARY SETTLEMENT CONFERENCE, DISCOVERY STAY, PAYMENT OF CERTAIN EXPENSES**

IT IS HEREBY STIPULATED by and between Petitioner, MAX DAVID BORENSTEIN (hereinafter referred to as the "Petitioner") appearing personally and by and through his counsel of record, Garry M. Gekht, Esq., of the Law Offices of Kaplan, Trope & Gekht, and Respondent, SOFIYA ALEXANDRA GOLDSHTEYN (hereinafter referred to as the "Respondent"), appearing personally and by and through her co-counsel of record, J.R. Howell, Esq., for Law Office of J.R. Howell, as follows:

1. Petitioner shall advance the sum of $300,000 directly to the Law Office of J.R. Howell Attorney Client Trust Account, which advance shall be used by Respondent for the payment of her attorney and forensic fees and costs in the herein matter. Said advance shall be

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Los Angeles, CA 90024
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without prejudice and subject to reallocation, recharacterization and chargeability at the time of trial or settlement, jurisdiction for which is reserved by the Court.

2. Petitioner shall advance the sum of $55,468.53 directly to Brody Pennell Heating and Air Conditioning for Invoice No. 24360707 related to the real property commonly known as 11540 Clover Avenue, Los Angeles, CA 90066. Said advance shall be without prejudice and subject to reallocation, recharacterization and chargeability at the time of trial or settlement, jurisdiction for which is reserved by the Court.

3. Payments by Petitioner pursuant to paragraph 1 and 2 of the herein Stipulation and Order shall be due on or before September 1, 2024.

4. The parties shall present for and attend a Voluntary Settlement Conference on November 13, 2024, at Signature Resolution Services, with Honorary Judge Thomas Trent Lewis, Retired, presiding as mediation officer.

5. Petitioner's expert(s) shall provide their reports and all back-up documentation reviewed in compiling same to Respondent's expert(s) on or before September 30, 2024. The parties' forensic accountants shall meet and confer on or before October 31, 2024, on the following issues, for which they shall prepare and agree on a joint side by side statement (outlining the agreements and disagreements of the parties' respective forensics on the various line items contained on the following reports) on or before November 7, 2024:

a. Marital Standard of Living

b. Community/Separate Property Balance Sheet

c. Cashflow available for support

d. Post-separation accounting

6. The parties shall exchange all documents via their forensic accountants that are reviewed or used by the expert in preparing any report pursuant to Paragraph 5, which documents shall be provided as soon as possible, but in no event more than five (5) days from any request (unless such days include Jewish holidays, in which case the due date shall extend by the number of days that are Jewish holidays).

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7. As of August 5, 2024, all party discovery, inclusive of motion to compel deadlines, is stayed, subject to a 30-day written recall notice. The provision of the herein Paragraph 7 shall not apply to discovery issued by either party to third party witnesses.

8. Each of the Parties has entered into the herein Stipulation and Order voluntarily and free of any duress or undue influence.

9. The herein Stipulation and Order shall be effective forthwith upon signing by the Parties and their respective counsel (as applicable) and shall not depend upon its processing at Court to become effective.

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10. Facsimile and/or electronic signatures shall be accepted in lieu of originals, and this document can be signed in multiple parts, and each signature will be deemed an original, without all signatures necessarily having to appear on the same signature page.

IT IS SO STIPULATED:

DATED: August Aug 30, 2024, 2024 By: Max Borenstein (Aug 30, 2024 08:26 PDT)
MAX DAVID BORENSTEIN, PETITIONER

DATED: August 30, 2024 By: Sofiya Goldshteyn (Aug 30, 2024 14:18 PDT)
SOFIYA ALEXANDRA GOLDSHTEYN, RESPONDENT

APPROVED AS TO FORM ONLY AS CONFORMING TO THE STIPULATION OF THE PARTIES:

DATED: August 30, 2024 LAW OFFICES OF KAPLAN, TROPE & GEKHT

By: _____
Garry M. Gekht, Esq.
Attorney for Petitioner,
MAX DAVID BORENSTEIN

DATED: August 30, 2024 LAW OFFICE OF J.R. HOWELL

By: J.R. Howell
J. R. Howell, Esq.
Attorney for Respondent,
SOFIYA ALEXANDRA GOLDSHTEYN

ORDER

IT IS SO ORDERED.

DATED: 10/09/2024

Scott J. Nord
JUDGE

JUDGE OF THE LOS ANGELES SUPERIOR COURT

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd, Suite 1250
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EXHIBIT

L

Garry M. Gekht, Esq. (SBN 321424)
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mbore@ktg.law

Attorneys for Petitioner,
Max David Borenstein

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **NOTICE OF PETITIONER'S LIMITED RECALL OF DISCOVERY STAY**

TO RESPONDENT SOFIYA ALEXANDRA GOLDSHTEYN AND HER ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that, pursuant to the stipulation and order entered November 15, 2024—which put a stay on all Party discovery subject to a 30-day written recall notice—Petitioner is hereby making a limited recall of the discovery stay, only as it relates to the deposition of Respondent and the production of documents thereat. As set forth in the First Amended Notice of Taking Deposition and Request for Production of Documents at Deposition served concurrently herewith, said deposition and production shall occur at 10:00 AM on February 24, 2025.

///

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(310) 473-0798

LAW OFFICES OF KAPLAN, TROPE & GEKHT

DATED: 01/23/2025

BY: _____
Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
(310) 473-0798

EXHIBIT

M

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

March 4, 2025
8:30 AM

Honorable Scott J. Nord, Judge

A. Narayan, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: Trial Setting Conference

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jason P. Koch, Associated Attorney

Appearing via LACC:
Jimmy Ray Howell, Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

The Petitioner is sworn and testifies.

The Court, Counsel and Petitioner confer on the record.

Court finds that both parties have filed their trial request briefs.

Hearing argument from both parties, the Court makes the following orders:

- All written discoveries to be served and responded to by 05/01/2025.

- All depositions to be completed by 06/30/2025.

- Petitioner to advance $50,000 to Respondent.

The Court orders this matter continued to the date and time indicated below.

All other current orders are to remain in full force and effect.

The Trial Setting Conference is continued to July 7, 2025 at 8:30 AM in Stanley Mosk Dept. - 2B.

Notice is waived.

J.R. HOWELL (State Bar No. 268086)
jrhowell@jrhlegalstrategies.com
LAW OFFICE OF J.R. HOWELL
2219 Main Street
Suite 436
Santa Monica, CA 90405
Tel: (323) 897-8656

ANNE E. GROVER (*Pro Hac Vice*)
agrover@gbfamilylawyers.com
GROVER & BADALIAN LLC
Eleven North Washington Street
Suite 630
Rockville, MD 20850
Tel: (301) 358-1813, ext. 402

JASON P. KOCH (State Bar No. 325156)
jason@jasonkochlaw.com
THE LAW OFFICE OF JASON P. KOCH
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101
Phone: (805) 695-4527
Fax: (805) 695-4528

ATTORNEYS FOR RESPONDENT, SOFIYA A. GOLDSHTEYN

Electronically FILED by
Superior Court of California,
County of Los Angeles
6/6/2025 7:17 PM
David W. Slayton, Clerk of Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, vs. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **PROOF OF SERVICE** Dept.: ST2B Action Filed: August 11, 2022 Trial Date: Not Set

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 3 W. Carrillo Street, Suite 216, Santa Barbara, California, 93101. My electronic notification address is jason@jasonkochlaw.com.

On June 6, 2025, I served the following document(s) described as **(i) UNCONFORMED COPY OF RESPONDENT'S REQUEST FOR ORDER TO COMPEL COMPLIANCE AND REQUEST FOR SANCTIONS, COSTS, AND FEES;** and **(ii) BLANK RESPONSIVE DECLARATION FORM** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST (next page)

☐ **BY U.S. POSTAL SERVICE:** This document was served by United States mail. I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es) above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service at Santa Barbara, California, in a sealed envelope with postage fully paid.

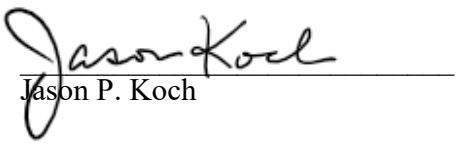
☐ **BY FACSIMILE:** The document(s) were served by facsimile. The facsimile transmission was without error and completed prior to 5:00 p.m. A copy of the transmission report is available upon request.

☐ **BY HAND DELIVERY:** The document(s) were left at the address indicated on the Service List, below.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 6, 2025, at Santa Barbara, California.



Jason P. Koch

SERVICE LIST

Garry M. Gekht, Esq. (SBN 321424) Law Offices of Kaplan, Trope & Gekht 10866 Wilshire Blvd., Suite 1250 Los Angeles, CA 90024 mbore@ktg.law garry@ktg.law	Attorneys for Petitioner, Max David Borenstein
J.R. Howell, Esq. Law Office of J.R. Howell 1223 Wilshire Blvd. P. O. Box 543 Santa Monica, CA 90403 jr@lawofficejrhowell.com	Attorneys for Respondent, Sofiya A. Goldshteyn
Anne E. Grover, Esq. Grover & Badalian LLC 11 N. Washington St., Suite 630 Rockville, MD 20850 agrover@gbfamilylawyers.com	Attorneys for Respondent, Sofiya A. Goldshteyn

Garry M. Gekht, Esq. (SBN 321424)
Carly J. Timm-Bijold, Esq. (SBN 361335)
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Attorneys for Petitioner,
Max David Borenstein

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David W. Slayton, Clerk of Court

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 *[Assigned to Dept. 2B, Hon. Scott J. Nord]* **DECLARATION OF GARRY M. GEKHT IN RESPONSE TO RESPONDENT'S MOTIONS TO COMPEL SET FOR AUGUST 6, 2025**

I, Garry M. Gekht, hereby declare as follows:

1. This declaration is made pursuant to sections 2009 and 2015.5 of the Code of Civil Procedure; California Rules of Court, rule 5.111; *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479; and *In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051. I have personal knowledge of the matters set forth herein, and, if called as a witness, I could and would testify competently thereto.

2. I am an attorney duly licensed to practice law before all the Courts of the State of California. I am a partner at the Law Offices of Kaplan, Trope & Gekht ("LOKTG"), attorneys of record for Petitioner Max Borenstein ("Petitioner") in the dissolution proceeding pending between him and Respondent Sofiya A. Goldshteyn ("Sofiya") in the Superior Court of

California, County of Los Angeles ("this proceeding").

3. This declaration is offered in support of Max's Response to the three Motions to Compel and Requests for Sanctions filed by Sofiya on June 2, 2025, June 6, 2025, and June 16, 2025, all of which are set for hearing on August 6, 2025 (collectively, "Sofiya's Motions").

4. This declaration is submitted to provide the Court with a description of the reasonable and necessary work performed and expected to be performed by LOKTG in connection with Sofiya's Motions. This declaration is not intended to be—and in no way is—a waiver of the attorney-client or attorney work product privileges.

RELEVANT FACTUAL BACKGROUND

5. This case was filed on August 11, 2022. I substituted in as attorney for Max on September 6, 2023, following the parties' unsuccessful attempt at mediation with Forrest Mosten. The parties were married for 7 years. There are no minor children. Prior to my tenure in the case, Sophia had propounded a Demand for Production, Set One and Form Interrogatories, Set One. No motion to compel was ever filed by Sophia within the statutory time period. Max's Preliminary Declaration of Disclosure was served on Sophia on November 17, 2022.

6. On March 1, 2024, Sophia propounded her second set of Family Law Form Interrogatories. Max responded on May 6, 2024. No motion to compel Max's further responses was filed by Sophia within the statutory time period.

7. On March 16, 2024, Sophia propounded her second set of Demands for Production. Max responded on May 6, 2024. No motion to compel Max's further responses or production was filed by Sophia with the statutory time period.

8. On December 1, 2023, Sophia issued a subpoena to Anonymous Content. On May 30, 2024, Sophia issued 5 more subpoenas, to Envision Legacy Group, Leitner Zander, LLP, Leonard Zander, Leor Tzur and Morgan Stanley, respectively. No motion to compel filed by Sophia responsive to those subpoenas was ever adjudicated. Max did not object to any of the six afore-mentioned subpoenas.

9. On July 22, 2024, Sophia issued 9 more subpoenas—to Benjamin Eye Institute,

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Cedars Sinai Medical Center, Culver City Psychology Associates, Fertility Storage Solutions, FPG Labs, Maria Leondio-Yee, MD, Morgan Stanley (second subpoena), South Lake Dental, and Susan Morrison, MD. No motion to compel filed by Sophia responsive to those subpoenas was ever adjudicated. Max did not object to any of the nine afore-mentioned subpoenas.

10. On January 28, 2024, Sophia issued two more subpoenas—to Fertility Storage Solutions and FPG Labs. No motion to compel filed by Sophia responsive to those subpoenas was ever adjudicated. Max did not object to any of the two afore-mentioned subpoenas.

11. On February 28, 2025, Sophia filed a Trial Setting Conference Brief requesting, among other relief, that "the Court set trial dates in this matter" and requested that the Court bifurcate the trial into three stages, totaling 12 days for stage 1, 9 days for stage 2 and a third stage without a trial day estimate.

12. On March 4, 2025, the Cout held a TSC and made orders regarding discovery, including, as relevant here, that:

"-All written discoveries to be served and responded to by 05/01/2025.

-All depositions to be completed by 06/30/2025."

All three law firms (to wit, Law Office of J.R. Howell, Law Office of Jason P. Koch, Grover & Badalian, LLC) had their named partner (Mr. Howell, Ms. Grover, Mr. Koch) attend the hearing.

13. On March 14, 2025, Sophia propounded her third set of Family Law Form Interrogatories and her first set of Requests for Admission, to which Max responded on April 15, 2025. On March 29, 2025, Sophia propounded her third set of document demand and her first set of Special Interrogatories, to which Max responded on April 30, 2025.

14. On April 28, 2025, I received a correspondence from Mr. Howell stating, in pertinent part that he "would like to set up a time to meet and confer to discuss Petitioner's Responses and Objections to Respondent's Reqeust for Admissions, Set One, and Form Interrogatories, Set Three." A true and correct copy of Mr. Howell's letter of April 28, 2025, is attached hereto as Exhibit "A."

15. On May 1, 2025, I was in court on this matter on Sophia's Request for Order for

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spousal support. I met and conferred with one of the attorneys for Sophia, Anne Grover, in the hallway while awaiting the hearing. I explained to Ms. Grover that the discovery received from Sophia was so poorly drafted that it would have been malpractice not to object to the requests, but that Max will voluntarily provide whatever information they needed, including a spreadsheet relating to all intellectual property even though we had provided one previously, and the documents that go with it. Ms. Grover stated that Mr. Howell was not in court, that she will discuss this with Mr. Howell, and she will let me know what else, if anything, is necessary. We agreed to set up a further call.

16. On May 6, 2025, I received and e-mail correspondence from Ms. Grover asking to set a time for a telephonic meet and confer. I responded to Ms. Grover on the same day and asked her office to coordinate with my paralegal to set a time "this week." A true and correct copy of Ms. Grover's May 6, 2025, correspondence and my same day responses thereto is attached hereto as Exhibit "B".

17. Notwithstanding my May 6, 2025, response to Ms. Grover on which he was copied, on May 7, 2025, Mr. Howell e-mailed me asking to set up a time to discuss Max's discovery responses. On May 8, 2025, my associate, Carly Timm-Bijold, Esq. wrote an e-mail to Mr. Howell, offering 9-12 p.m. on May 16, 2025, for a meet and confer. A true and correct copy of Mr. Howell's May 7, 2025 and Ms. Timm-Bijold's May 8, 2025, response thereto is attached hereto collectively as Exhibit "C."

18. On May 9, 2025, I received a Zoom invitation from Mr. Howell for Friday, May 16, 2025, at 9:00 a.m. to 10:00 a.m. A true and correct copy of Mr. Howell's Zoom invitation is attached hereto as Exhibit "D."

19. On May 16, 2025, I waited in the Zoom room for approximately 10 minutes without being let in. I received a call from my office, patching through Mr. Koch, one of Sophia's attorneys, who informed me that Mr. Howell was not going to be joining the Zoom and that he was going to be handling the meet and confer instead and that it would have to go forward telephonically. Ms. Timm-Bijold and I then spoke to Mr. Koch, who informed us that he does not know why the meet and confer was scheduled without a written meet and confer

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correspondence from his side and that is not the way he does meet and confers. We went over just two special interrogatories, which took us approximately 10 minutes, at which point Mr. Koch offered to send a writing addressing his legal positions related to Max's discovery responses, and we agreed to proceed with the meet and confer process in writing, which I informed him I welcomed.

20. I did not receive any meet and confer correspondence from Mr. Koch. No further meet and confer efforts were made by Mr. Koch, Mr. Howell, or Ms. Grover between my May 16, 2025, call with Mr. Koch and Sophia having filed her underlying motion to compel on June 2, 2025.

21. On June 9, 2025, I wrote to counsel for Sophia confirming the foregoing recitation of the meet and confer process and requested that the motions to compel be taken off calendar. Specifically and as is most pertinent, I wrote that Mr. Koch promised, but did not deliver, a meet and confer letter, thereby failing to meet and confer in substance as is required by the Code, making the motions defective. A true and correct copy of my June 9, 2025, letter is attached hereto as Exhibit "E."

22. At no point did any counsel for Sophia deny that Mr. Koch stated he would send a meet and confer letter and never sent one and that the motions were nonetheless filed.

ATTORNEYS FEES AND COSTS

23. I have worked at LOKTG[1] for the past 25 years, first as a paralegal, then as an in-house forensic accountant and Certified Divorce Financial Analyst, and—since 2018—as a named partner. I graduated magna cum laude from Chapman University College (now part of University of Massachusetts Global) with a degree in Business Administration: Accounting. I have been a Certified Divorce Financial Analyst since 2009, and I remain a licensed member in good standing of the Institute for Divorce Financial Analysts. I have been qualified as an expert in forensic accounting in Los Angeles Superior Court. I obtained my Juris Doctorate from

1. Formerly (from most recent to oldest): Law Offices of Kaplan & Gekht; Law Offices of Schuchman, Kaplan & Gekht; Law Offices of Schuchman & Kaplan; Law Offices of Schuchman & Alden; Law Offices of Schuchman & Marshall.

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Loyola Law School, Los Angeles, where I was named a Fritz Burns Scholar (a distinction awarded to top-ranking students that I maintained throughout my tenure), a Loyola Scholar and a Dean's List honoree. I also received First Honors in Advanced Legal Research. I have been recognized by Super Lawyers Magazine as a "Rising Star" every year since 2020. In 2024, I was named to Forbes' list of "10 Best Attorneys in Los Angeles." I have participated on a panel as a CLE presenter for the LBGT Bar Association's Family Law Symposium. I am knowledgeable regarding the prevailing rates charged by other family law attorneys in Southern California with similar qualifications to myself and other LOKTG staff. I have obtained such knowledge from, among other things, reviewing fee declarations by other attorneys in family law matters, appearing at and/or arguing over 100 attorney fee order requests in family law cases in the Los Angeles Superior Court, Orange County Superior Court, and Ventura County Superior Court, and speaking to other family law attorneys about their rates. In my opinion, the rates charged by LOKTG are reasonable and conscionable based on LOKTG's qualifications, the significance of the issues in this proceeding, and the value of the legal services performed, as described herein. My current hourly rate in this matter is $695.

24. My office employs associate attorneys who work exclusively in family law. Whenever possible, I have work performed by associates or staff at lower billing rates. Katherine Su O'Connor, Esq. ("Ms. O'Connor") is an associate with my firm and has been licensed since 2006. She is practicing exclusively family law at my firm. Her current billing rate is $595 per hour. Carly Timm-Bijold, Esq. ("Ms. Timm-Bijold") is also an associate with my firm and has been licensed since 2025. She is practicing exclusively family law at my firm. Her current billing rate is $475 per hour. My office also employs seasoned staff of financial and legal professionals, each of whom has a minimum of 20 years of experience working in family law. My firm's hourly charges range from $125 an hour for assistant time to $595 an hour for associate time. We bill in 1/10th of an hour increments for our time. We do not charge a monthly overhead cost, which is included in our billing rates.

WORK PERFORMED TO DATE

25. To date, Ms. O'Connor has spent approximately 7.2 hours in connection with this

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Responsive Declaration, including reviewing Sofiya's Motions, and researching and drafting the Memorandum of Points and Authorities and instant Declaration. **Max has, therefore, incurred a total of approximately $4,284 in connection with Ms. O'Connor's work in connection with Sofiya's Motions.**

26. To date, Ms. Timm-Bijold has spent approximately 30 hours in connection with tasks related to Sofiya's Motions, on tasks including, but not limited to, drafting Max's discovery responses, reviewing and responding to subsequent correspondence from Sofiya's Attorneys, drafting and revising the Separate Statements and Memorandum of Points and Authorities filed herewith. **Max has, therefore, incurred a total of approximately $14,250 in connection with Ms. Timm-Bijold's work in connection with Sofiya's Motions.**

27. To date, I have spent approximately 6.2 hours in connection with tasks related to Sofiya's Motions, on tasks including, but not limited to, reviewing the case file to draft the herein declaration which includes the discovery history of the case and the meet and confer attempts leading up to the instant motions, reviewing and revising the memorandum of points and authorities, coordinating with my associate attorneys, reviewing and revising the herein declaration, reviewing and revising the separate statements, and reviewing and revising the FL-320. **Max has, therefore, incurred a total of approximately $4,309 in connection with my work in connection with Sofiya's Motions.**

ESTIMATED FUTURE WORK

28. I estimate that Ms. Timm-Bijold will spend approximately 8 hours in connection with future work in connection with Sofiya's Motions, on tasks including, but not necessarily limited to, reviewing the reply pleadings to the four discovery motions, including potentially four separate statements and preparing notes for my argument outline. **Max will, therefore, incur additional fees of approximately $3,500 in connection with Ms. Timm-Bijold's future work in connection with Sofiya's Motions.**

29. I estimate that I will spend approximately 6 hours in connection with future work in connection with Sofiya's Motions, on tasks including, but not necessarily limited to drafting an argument outline and reviewing, cursorily, the reply pleadings as Ms. Timm-Bijold will be

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holding the laboring oar on the project, and appearing and arguing at the hearing. **Max will, therefore, incur additional fees of approximately $4,170 in connection with my future work in connection with Sofiya's Motions.**

30. Therefore—in addition to $3,000 in sanctions pursuant to Code of Civil Procedure section 2023.050, et. Seq., Max respectfully requests that the Court order Sofiya to pay LOKTG no less than $30,513 as and for sanctions related to her underlying discovery motions.

CONCLUSION

31. For the reasons set forth in this Responsive Declaration, Max respectfully requests that the Court deny Sofiya's Motions in their entirety, and sanction her as requested in an amount of no less than $33,513.

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

LAW OFFICES OF KAPLAN, TROPE & GEKHT

DATED: 07/24/2025 BY: _____

Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

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10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

EXHIBIT “A”

LAW OFFICE OF
J.R.HOWELL
2219 Main Street, Suite 436, Santa Monica, CA 90405

February 24, 2025

VIA E-Mail

Michelle B. Taran, Esq.
Law Offices of Kaplan & Gekht
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024

Re: Marriage of Borenstein/Goldshteyn, LASC No. 22STFL08826

Michelle:

We acknowledge receipt of your letter dated April 25, 2025.

You have been in possession of Sofiya's responses for more than 64 days. Never once in that time did anyone from your office raise alleged document deficiencies.

To be clear, Respondent's Second Supplemental Responses and document production were served on February 24, 2025, along with the requisite verifications. Although your letter identifies a series of categories of documents you claim are lacking, I would direct your attention to the transcript of Respondent's deposition. At that time, your office chose not to explore any of the areas now raised.

Moreover, although Petitioner has served over 400 requests for production on Respondent—who is not the party primarily in possession of the relevant financial records—Respondent has produced more than 5,000 pages of documents. This includes more than 2,000 pages of documents she produced in February 2023 and the various voluntary productions facilitated by the mediation process. Your office also augmented its discovery to Sofiya with third-party subpoenas on top of her deposition testimony and the documents produced on February 24th.

As reflected in your forensic accountant's detailed declarations and reports, you have ample information to assess Respondent's financial circumstances, needs, and the marital standard of living, including a detailed post-separation accounting based on the documents provided. Nowhere in Mr. Reichman's declaration and reports on the IAFS or MSOL is there any claim that relevant financial information is lacking for his analysis, especially analysis and opinions related to temporary spousal support and the propriety of a retroactive payment.

More importantly, pursuant to *Code of Civil Procedure* § 2031.310(c), the deadline to file any motion to compel further responses expired on April 10, 2025, two weeks before you sent your

(323) 897-8656
jr@lawofficejrhowell.com

letter. Accordingly, any motion regarding Respondent's February 24, 2025 responses would be untimely and subject to sanction.

I would like to set up a meet and confer to discuss Petitioner's Responses and Objections to Respondent's Requests for Admission, Set One, and Form Interrogatories, Set Three. Your letter sought a meeting on or before May 1, 2025; however, that short timeframe does not work for my schedule. Please advise of your availability over the next ten days, and I will circulate a Zoom link.

Sincerely,

J.R. Howell

Cc: Anne Grover, Esq.
Jason Koch, Esq.

EXHIBIT “B”

Garry M. Gekht, Esq.

From: Garry M. Gekht, Esq.
Sent: Tuesday, May 6, 2025 12:17 PM
To: Anne Grover
Cc: Borenstein Team; J.R. Howell; Jason Koch; Morgan Appel; Kim Williams
Subject: RE: Borenstein/Goldshteyn

Dear Anne:

I have no problem providing you the information regarding residuals (much of it has already been provided). I will get that to you by Monday. The issue I had was the form of the request, as you can see from our objections.

As to a meet and confer—I offered a time yesterday and nobody responded to me. I can be available this week—please have your office coordinate with Janet of my office.

I am not going to release my expert reports without an exchange.

Best,

GARRY M. GEKHT, ESQ.
LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd., Suite 1250
Los Angeles, CA 90024
Tel 310-277-9009
Tel 310-473-0798
Fax 310-473-0625
www.kaplangekht.com
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From: Anne Grover <agrover@gbfamilylawyers.com>
Sent: Monday, May 5, 2025 3:01 PM
To: Garry M. Gekht, Esq. <garry@ktg.law>
Cc: Borenstein Team <mbore@ktg.law>; J.R. Howell <jr@lawofficejrhowell.com>; Jason Koch <jason@jasonkochlaw.com>; Morgan Appel <mappel@gbfamilylawyers.com>; Kim Williams <kwilliams@gbfamilylawyers.com>
Subject: Borenstein/Goldshteyn

Garry: I do not believe we ever locked in a time to meet and confer regarding Max's deficient discovery.

As discussed last week, amongst other things, we need to know how Max allocated community and separate interests in all residuals, whether there are any contracts/emails/communications/drafts with each such project to support those assertions, including the HBO original contract and addenda. If there are specific individuals who were involved in those projects and contracts, please provide that information as well.

If your client has any drafts/communications/individuals with knowledge regarding the HBO contracts, that information is also critical, especially any expert reports or opinions you have.

If today no longer works for a meet and confer, please advise immediately if you have availability tomorrow or Wednesday, and if so, when.

Best,

Anne E. Grover

Anne E. Grover
(she/her)
Partner
Grover & Badalian
301-358-1813 x 402
240-658-6463
agrover@gbfamilylawyers.com
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11 N Washington St #630, Rockville, MD 20850

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EXHIBIT “C”

Garry M. Gekht, Esq.

From: Carly Timm-Bijold <carly@ktg.law>
Sent: Thursday, May 8, 2025 4:45 PM
To: J.R. Howell
Cc: Borenstein Team; Jason Koch; Morgan Appel; Kim Williams; Anne Grover
Subject: Re: Borenstein/Goldshteyn
Attachments: 25.04.30 ETOC re Meet and Confer.pdf

Good Afternoon J.R.,

Garry is available for a telephonic meet and confer on Max's discovery responses between 9:00 AM – 12:00 PM (PST) next Friday (May 16, 2025).

Regarding your email of Tuesday evening, the correspondence in question was sent to you at 8:19 PM last Wednesday (April 30, 2025). Attached hereto for your convenience is a copy of said email and its attachment.

Carly Timm-Bijold, Esq.
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Los Angeles, CA 90024
(310) 473-0798
www.kaplangekht.com

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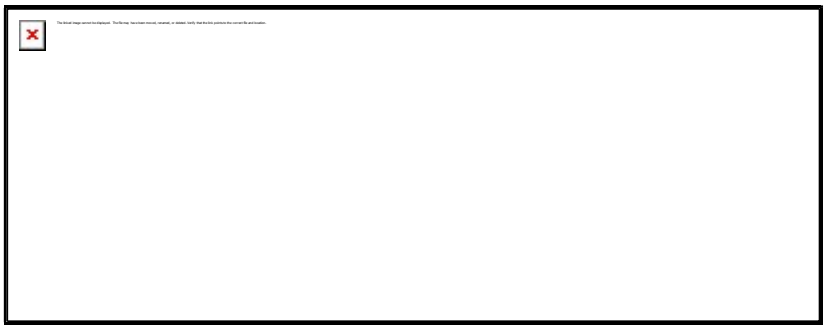
From: J.R. Howell <jr@lawofficejrhowell.com>
Date: Wednesday, May 7, 2025 at 4:56 PM
To: Garry M. Gekht, Esq. <garry@ktg.law>
Cc: Borenstein Team <mbore@ktg.law>, Jason Koch <jason@jasonkochlaw.com>, Morgan Appel <mappel@gbfamilylawyers.com>, Kim Williams <kwilliams@gbfamilylawyers.com>, Anne Grover <agrover@gbfamilylawyers.com>
Subject: Re: Borenstein/Goldshteyn

Hi Garry,

Following up on Anne's message below to discuss Max's Responses and Objections to Respondent's Form Interrogatories and Requests for Admission served on April 15, 2025, and his Responses and Objections to Respondent's Special Interrogatories and Requests for Production of Documents served on April 30, 2025.

Please identify dates and times over the next 7 days that work for your office and we will circulate a dial-in.



****

This message was sent from J.R. Howell and is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to the attorney-client privilege or other confidentiality protections. If you are not a designated recipient, you may not review, copy or distribute this message. If you receive this in error, please notify the sender by reply e-mail and delete this message. Thank you.

****

On Mon, May 5, 2025 at 6:01 PM Anne Grover <agrover@gbfamilylawyers.com> wrote:

Garry: I do not believe we ever locked in a time to meet and confer regarding Max's deficient discovery.

As discussed last week, amongst other things, we need to know how Max allocated community and separate interests in all residuals, whether there are any contracts/emails/communications/drafts with each such project to support those assertions, including the HBO original contract and addenda. If there are specific individuals who were involved in those projects and contracts, please provide that information as well.

If your client has any drafts/communications/individuals with knowledge regarding the HBO contracts, that information is also critical, especially any expert reports or opinions you have.

If today no longer works for a meet and confer, please advise immediately if you have availability tomorrow or Wednesday, and if so, when.

Best,

Anne E. Grover

Anne E. Grover

(she/her)

Partner

Grover & Badalian

301-358-1813 x 402

240-658-6463

agrover@gbfamilylawyers.com

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EXHIBIT “D”

From:	Garry M. Gekht, Esq. on behalf of jrhowell@zmail.com
To:	Borenstein Team
Subject:	FW: Invitation: Borenstein: Meet and Confer re Petitioner's Responses to Respondent's Requests @ Fri May 16, 2025 09:00 - 10:00 AM (PDT - America/Los_Angeles) (garry@ktg.law)
Start:	Friday, May 16, 2025 9:00:00 AM
End:	Friday, May 16, 2025 10:00:00 AM
Location:	https:
Attachments:	invite.ics

GARRY M. GEKHT, ESQ.

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From: jrhowell@zmail.com <jrhowell@zmail.com>
Date: Friday, May 9, 2025 at 5:02 AM
To:
Subject: Invitation: Borenstein: Meet and Confer re Petitioner's Responses to Respondent's Requests @ Fri May 16, 2025 09:00 - 10:00 AM (PDT - America/Los_Angeles)(garry@ktg.law)

Description

_____

JR Howell is inviting you to a scheduled Zoom meeting.
Join Zoom Meeting
https://us06web.zoom.us/j/89548763561?pwd=XMBPt57ZbPj9Ocbg3k1ODQC2tA25ir.1 <https://urldefense.proofpoint.com/v2/url?u=https-3A__us06web.zoom.us_j_89548763561-3Fpwd-3DXMBPt57ZbPj9Ocbg3k1ODQC2tA25ir.1&d=DwMFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpgnVfiiMM&r=QD9EXTj84Eg4L0B7WPlamg&m=y1_mPFcTSlz9_nVbKYVQ4PI_W3uZmYbRaC8pb4Il9XRPoBakQ9px693sjSfwM5E5&s=BM8K0qPk2yoDW0atHGuyaEIKvdeNStsFVARGZTifWY0&e=>

Meeting ID: 895 4876 3561
Passcode: 334830

One tap mobile
+16469313860,,89548763561#,,,,*334830# US
+16465588656,,89548763561#,,,,*334830# US (New York)

Dial by your location
• +1 646 931 3860 US
• +1 646 558 8656 US (New York)
• +1 312 626 6799 US (Chicago)
• +1 301 715 8592 US (Washington DC)
• +1 305 224 1968 US
• +1 309 205 3325 US
• +1 669 444 9171 US
• +1 689 278 1000 US
• +1 719 359 4580 US
• +1 720 707 2699 US (Denver)
• +1 253 205 0468 US
• +1 253 215 8782 US (Tacoma)
• +1 346 248 7799 US (Houston)
• +1 360 209 5623 US
• +1 386 347 5053 US
• +1 507 473 4847 US
• +1 564 217 2000 US

Meeting ID: 895 4876 3561
Passcode: 334830

Find your local number: https://us06web.zoom.us/u/kdpo883qY6

_____

When

Fri May 16, 2025 09:00 - 10:00 AM (PDT - America/Los_Angeles)

Location

https://us06web.zoom.us/j/89548763561?pwd=XMBPt57ZbPj9Ocbg3k1ODQC2tA25ir.1

Attendees

JR Howell <mailto:jrhowell@zmail.com> - organizer

agrover@gbfamilylawyers.com <mailto:agrover@gbfamilylawyers.com>

garry@ktg.law <mailto:garry@ktg.law>

jason@jasonkochlaw.com <mailto:jason@jasonkochlaw.com>

jr@lawofficejrhowell.com <mailto:jr@lawofficejrhowell.com>

mappel@gbfamilylawyers.com <mailto:mappel@gbfamilylawyers.com>

mbore@ktg.law <mailto:mbore@ktg.law>

Reply

Yes

No

Maybe

EXHIBIT “E”

KAPLAN, TROPE & GEKHT
ATTORNEYS AT LAW

MARK VINCENT KAPLAN*
MICHAEL L. TROPE°
GARRY M. GEKHT^

HOWARD J. POSNER*°
DEBORAH J. TILTON
DRORIT BICK RAITER
MELINE KYURKCHYAN
SARA TAVAKOLI

*CERTIFIED FAMILY LAW SPECIALIST, STATE BAR OF CALIFORNIA BOARD OF LEGAL SPECIALIZATION

^A PROFESSIONAL CORPORATION

°OF COUNSEL

June 9, 2025

VIA EMAIL ONLY

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Anne E. Grover, Esq.
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Jason P. Koch, Esq.
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3 W. Carillo Street, Suite 216
Santa Barbara, CA 93101
jason@jasonkochlaw.com

RE: *IRMO Borenstein and Goldshteyn*
Case Number 22STFL08826

Dear Counsel:

I write to address the Motion to Compel with which my office was served on June 2, 2025.

As you are aware, between April 15 and April 30, 2025, our office served Max's responses to four items of discovery propounded by Sofiya: Requests for Admission (Set One), Form Interrogatories—General (Set Three), Special Interrogatories (Set One), and Demand for Production (Set Three) (collectively, "Max's Responses").

Starting on April 28, 2025, I received numerous requests from J.R. and Anne to make myself available to meet and confer via Zoom about the alleged deficiencies in Max's Responses. While I promptly responded thereto in correspondence of April 30, 2025—which was sent to all three of your offices via the email addresses listed in the caption of your then-mostly-recently-filed pleading—I received an email from Anne on May 5, 2025, stating that "[she did] not believe we ever locked in a time to meet and confer regarding Max's deficient discovery."

On May 6, 2025, I—again—offered my availability for a meet and confer and directed Anne to coordinate the details with my Assistant, which she did not do. This inane cycle continued on May 7, 2025 when I received a message from J.R., following up on the May 5, 2025 email from Anne—to which, as described above, I had already responded. It was only after a fourth communication from my office—specifically, a May 8, 2025 email from my Associate—that you agreed to a May 16, 2025 meet and confer date.

I would note that this faux-urgency and lack of coordination has proven to be a hallmark of your approach to resolving discovery disputes in this case; instead of written meet and confer letters (and responses thereto) you appear to prefer to shift the onus to my office to coordinate a

meeting with your three offices. When this coordination does not occur—not because of my non-responsiveness, but because of your lack of communication between one another—you imply in your correspondence that it is my office that remains unresponsive, forcing you to continuously follow up. Calculated or not, this approach is not well-taken, and will be brought to the Court's attention in the context of one or more future requests for sanctions under Family Code section 271.

Your collective deluge of uncoordinated requests—and my office's prompt acquiescence thereto—notwithstanding, on the morning of May 16, 2025, we were informed that, rather than a Zoom meeting with, at minimum, J.R. and Anne, my colleague and I would instead be joining a call with Jason, only. Due to his colleagues' sudden unavailability, I repeatedly offered to postpone the call, offers which Jason declined.

While Jason insisted on continuing the call, he proceeded to discuss a de minimis segment of Max's Responses—specifically, a small handful of issues he had with what he argued were a lack of specificity in the objections raised in Max's Responses to Sofiya's Special Interrogatories (Set One). I believe we got through only two Special Interrogatories during the call which was relatively short. This brief discussion did not prove fruitful; not only was Jason unable to point to any authority requiring that discovery objections be accompanied by explanations or argument, but—as I pointed out during the call—the objections disputed by Jason were, in fact, bolstered by references to specific sections of the Code of Civil Procedure.

Given the lack of progress during the call—and in light of Jason's repeated comments that, had he been the one directing the meet and confer process, he would have met and conferred in writing rather than telephonically—I suggested, and Jason agreed, that he would meet and confer with my office in writing by providing a letter listing out Sofiya's positions. In a gesture of good faith—and with the goal of resolving any supposed deficiencies with a minimum amount of expense to the Parties—I confirmed to Jason that we would be providing further, informal information and production on Max's behalf, as Anne and I had agreed I would do in the Courthouse on May 1, 2025, while waiting for Sofiya's Request for Order for Spousal Support to be heard. Despite Jason's representations to myself and my associate during our call—and despite the fact that my office provided all three of you with the promised information and production the following day—Jason's promised meet and confer correspondence never materialized. Instead, we have now been served with a motion to compel and request for sanctions in excess of $15,000.

I would note that the above information was conspicuously absent from the brief treatment of the meet and confer process represented to the Court by J.R. in his declaration in support of Sofiya's motion to compel. Absent a total lack of communication between your offices—which would, if true, still be grounds for sanctions under Family Code section 271—I cannot reconcile such an omission with anything other than a willful attempt to mislead the Court about the facts giving rise to Sofiya's motion.

I cannot reconcile the tactics utilized by your collective offices regarding this discovery with a party acting in good faith. Should you fail to promptly withdraw Sofiya's motion to compel and request for sanctions, we will have no choice but to bring to the Court's attention the foregoing facts in Max's response thereto. As you likely well know, the Code requires an actual meet and confer, not an aborted and never materialized effort. Please confirm by no later than 5:00 P.M. on June 11, 2025, that you have withdrawn Sofiya's motion, in full.

I look forward to your prompt response.

Very Truly Yours,

Garry M. Gekht, Esq.
Of the Law Offices of Kaplan, Trope & Gekht

GMG: ctb

Garry M. Gekht, Esq. (SBN 321424)
Carly J. Timm-Bijold, Esq. (SBN 361335)
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Attorneys for Petitioner,
Max David Borenstein

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7/24/2025 11:51 PM
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 *[Assigned to Dept. 2B, Hon. Scott J. Nord]* **PETITIONER'S MEMORANDUM OF POINTS AND AUTHORITIES IN RESPONSE TO RESPONDENT'S MOTIONS TO COMPEL SET FOR AUGUST 6, 2025**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Max David Borenstein ("Max") submits the following Memorandum of Points and Authorities in support of his Response to Respondent Sofiya Alexandra Goldshteyn ("Sofiya") Motions to Compel. to comply and/or produce documents.

II. SUMMARY OF ARGUMENT

Sofiya's motions are defective for failure to comply with the Code of Civil Procedure and Sofiya should be sanctioned for refusing to withdraw them.

In order to be granted the requested relief, Sofiya, as the moving party, bears the burden of showing that a statement of compliance is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection is without merit or too general. (*See Scott v. Renz* (1945) 67 Cal.App.2d 428, 431 (stating "[o]n all motions the burden is on the moving party in the trial court"); *Code Civ. Proc.* sec. 2031.310, subd. (a)(1)-(3) (authorizing a party to move to compel further responses to a demand for production if a statement of compliance is incomplete; a representation of inability to comply is inadequate, incomplete, or evasive; or an objection is without merit or too general).) The RFO must also "set forth specific facts showing good cause justifying the discovery sought by the demand. (*See Code Civ. Proc.* sec. 2031.310, subd. (b)(1).)

However, for the reasons specified at length in Max's Response to Sofiya's Separate Statements, Sofiya cannot meet her burden. Specifically, Sofiya complains of things which Max is not required to provide under the Code of Civil Procedure.

III. THE RFO IS PROCEDURALLY DEFECTIVE FOR SOFIYA'S FAILURE TO MEET AND CONFER, AND ON THAT BASIS ALONE, MUST BE DENIED

Sofiya did not engage in a "reasonable and good faith attempt at an informal resolution of each issue presented by the motion" as required before filing her motion. (*See Code Civ. Proc.*

sec. 2031.310, subd. (b)(2) (requiring a motion to compel further responses be accompanied by a meet and confer declaration).) Sofiya's sole attempt to meet and confer prior to filing her motion was scheduling a Zoom, calling in, going over two interrogatories, a promise of a letter with a detailed explanation followed by weeks of silence and a motion compel. This falls far short of what is required under the Code:

> [T]he statute requires that there be a serious effort at negotiation and information resolution. Perhaps… it is necessary to remind trial counsel… once again that [a]rgument is not the same as informal negotiation; … attempting informal resolution means more than the mere attempt by the discovery proponent to persuade the objector of the error of his ways; and that a reasonable and good faith attempt at informal resolution entail something more than bickering with [opposing] counsel… Rather, the law requires that counsel attempt to talk the matter over, compare their view, consult, and deliberate.

(*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1294 (internal quotations and citations omitted).)

There was nothing resembling such a "reasonable and good faith attempt at informal resolution" here, where Sofiya's counsel stated he would send a letter, never sent it, and then filed a motion.

Max was thus never given an opportunity to substantively address the meet and confer letter or comply. Neither Max nor his counsel have ever indicated any refusal to try to cooperate. . Sofiya simply did not afford Max the opportunity to meet and confer and try to resolve the disputes or comply before filing the RFO.

Because Sofiya failed to meet and confer prior to filing her motion as required, the RFO is procedurally defective and should be denied.

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(310) 473-0798

IV. SOFIYA'S REQUEST FOR ATTORNEYS' FEES IS NEITHER WARRANTED NOR REASONABLE

To the extent that the request to compel further responses and/or document production is denied for the reasons stated hereinabove, there is no basis to grant Sofiya's request for attorneys' fees. Max also acted with substantial justification in that he attempted to meet and confer with counsel regarding the issue only to receive no further communication other than the instant motion. Thus, under these circumstances, attorneys' fees would not be warranted even if Max's responses or document production were deficient.

V. INSTEAD, SOFIYA SHOULD BE SANCTIONED FOR HER MISUSE OF THE DISCOVERY PROCESS, INCLUDING BRINGING THE PRESENT RFO, IN AN AMOUNT OF NO LESS THAN $33,513

The Court may impose monetary sanctions against anyone engaging in conduct that is a misuse of the discovery process. (*Code Civ. Proc.* § 2023.030, subd. (a).) Misuses of the discovery process include, but are not limited to, the following:

> (a) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.
>
> (b) Using a discovery method in a manner that does not comply with its specified procedures.
>
> (c) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense…
>
> (h) Making or opposing, unsuccessful and without substantial justification, a motion to compel or to limit discovery.
>
> (i) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good

Law Offices of Kaplan, Trope & Gekht
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> faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that an attempt at informal resolution has been made.

(*Code Civ. Proc.* § 2023.010.) Also, "[t]he court **shall** impose a monetary sanction… against any party… who unsuccessfully makes or opposes a motion to compel further response to a demand..." (*Code Civ. Proc.* sec. 2030.300, subd. (d).) Sofiya has engaged in all of the foregoing misuses of the discovery process.

Further, Family Code § 271(a) provides:

> Notwithstanding any other provision of this code, the Court may base an award of attorneys' fees and costs on the extent to which the conduct of each party or attorney furthers or frustrates the policy of law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and the attorneys.

As described herein and the accompanying Declaration of Garry M. Gekht, Esq. filed concurrently herewith, Sofiya's counsel has refused to meet and confer in good faith to resolve this discovery dispute and/or withdraw the motions. Accordingly, Sofiya should be sanctioned in an amount no less than $33,513, as and for the attorneys' fees and costs incurred by Max as a result of her conduct.

VI. CONCLUSION

For the reasons set forth herein, Max respectfully requests that Sofiya's RFO be denied in its entirety, and Sofiya sanctioned in an amount of no less than $33,513.

LAW OFFICES OF KAPLAN, TROPE & GEKHT

DATED: 07/24/2025 BY: _____

Garry M. Gekht, Esq.
Attorney for Petitioner,
Max David Borenstein

Law Offices of Kaplan, Trope & Gekht
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
(310) 473-0798

PARTY WITHOUT ATTORNEY OR ATTORNEY NAME: Garry M. Gekht, Esq.
STATE BAR NUMBER: 321424
FIRM NAME: Law Offices of Kaplan, Trope & Gekht
STREET ADDRESS: 10866 Wilshire Blvd., Suite 1650
CITY: Los Angeles
STATE: CA
ZIP CODE: 90024
TELEPHONE NO.: (310) 473-0798
FAX NO.:
EMAIL ADDRESS: mbore@ktg.law
ATTORNEY FOR (name): Petitioner, Max David Borenstein

FOR COURT USE ONLY

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Superior Court of California,
County of Los Angeles
7/24/2025 11:51 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By T. Soto-Thayer, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: (same as above)
CITY AND ZIP CODE: Los Angeles, 90012
BRANCH NAME: Stanley Mosk Courthouse (Central Judicial District)

PETITIONER: MAX DAVID BORENSTEIN
RESPONDENT: SOFIYA ALEXANDRA GOLDSHTEYN
OTHER PARENT/PARTY:

RESPONSIVE DECLARATION TO REQUEST FOR ORDER

CASE NUMBER: 22STFL08826

HEARING DATE:	TIME:	DEPARTMENT OR ROOM:
August 6, 2025	8:30 AM	2B

Read *Information Sheet: Responsive Declaration to Request for Order* (form FL-320-INFO) for more information about this form.

1. [x] RESTRAINING ORDER INFORMATION
   a. [x] No domestic violence restraining/protective orders are now in effect between the parties in this case.
   b. [ ] I agree that one or more domestic violence restraining/protective orders are now in effect between the parties in this case.

2. [ ] CHILD CUSTODY
   [ ] VISITATION (PARENTING TIME)
   a. [ ] I consent to the order requested for child custody (legal and physical custody).
   b. [ ] I consent to the order requested for visitation (parenting time).
   c. [ ] I do not consent to the order requested for [ ] child custody [ ] visitation (parenting time)
   [ ] but I consent to the following order:

3. [ ] CHILD SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) or, if eligible, a current *Financial Statement (Simplified)* (form FL-155) to support my responsive declaration.
   b. [ ] I consent to the order requested.
   c. [ ] I consent to guideline support.
   d. [ ] I do not consent to the order requested [ ] but I consent to the following order:

4. [ ] SPOUSAL OR DOMESTIC PARTNER SUPPORT
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) to support my responsive declaration.
   b. [ ] I consent to the order requested.
   c. [ ] I do not consent to the order requested [ ] but I consent to the following order:

PETITIONER: MAX DAVID BORENSTEIN RESPONDENT: SOFIYA ALEXANDRA GOLDSHTEYN OTHER PARENT/PARTY:	CASE NUMBER: 22STFL08826

5. [ ] PROPERTY CONTROL
   a. [ ] I consent to the order requested.
   b. [ ] I do not consent to the order requested [ ] but I consent to the following order:

6. [ ] ATTORNEY'S FEES AND COSTS
   a. I have completed and filed a current *Income and Expense Declaration* (form FL-150) to support my responsive declaration.
   b. I have completed and filed with this form a *Supporting Declaration for Attorney's Fees and Costs Attachment* (form FL-158) or a declaration that addresses the factors covered in that form.
   c. [ ] I consent to the order requested.
   d. [ ] I do not consent to the order requested [ ] but I consent to the following order:

7. [x] OTHER ORDERS REQUESTED
   a. [ ] I consent to the order requested.
   b. [x] I do not consent to the order requested [x] but I consent to the following order:

   See Attachment 7

8. [ ] TIME FOR SERVICE / TIME UNTIL HEARING
   a. [ ] I consent to the order requested.
   b. [ ] I do not consent to the order requested [ ] but I consent to the following order:

9. [x] FACTS TO SUPPORT my responsive declaration are listed below. The facts that I write and attach to this form cannot be longer than 10 pages, unless the court gives me permission. [ ] Attachment 9.

   See the following documents filed concurrently herewith:

   1. Petitioner's Response to Respondent's Separate Statement in Support of Request for Order to Compel Further Responses to Respondent's Requests for Admission and Interrogatories
   2. Petitioner's Response to Respondent's Separate Statement in Support of Request for Order to Compel Further Responses to [Respondent's] Special Interrogatories (Set One) and Requests for Production of Documents (Set Three)
   3. Declaration of Garry M. Gekht in Response to Respondent's Motions to Compel Set for August 6, 2025
   4. Petitioner's Memorandum of Points in Response to Respondent's Motions to Compel Set for August 6, 2025

I declare under penalty of perjury under the laws of the State of California that the information provided in this form and all attachments is true and correct.

Date: 07/24/2025

Garry M. Gekht, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

ATTACHMENT 7 TO RESPONSIVE DECLARATION TO REQUEST FOR ORDER

For the reasons set forth in the documents filed herewith, Petitioner Max David Borenstein ("Max") respectfully requests that the Court make the following findings and orders in connection with the three motions filed by Respondent Sofiya Alexandra Goldshteyn ("Sofiya") that are currently scheduled for hearing on August 6, 2025 (collectively, "Sofiya's Motions"):

1. Admit and receive into evidence the Declaration of Garry M. Gekht filed herewith;
2. Deny Sofiya's Motions in their entirety;
3. Order Sofiya to pay sanctions directly to Max's Counsel—the Law Offices of Kaplan, Trope & Gekht—in an amount no less than $33,513 within ten (10) days of the date of the hearing on Sofiya's Motions.

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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,

Respondent,

v.

SOFIYA ALEXANDRA GOLDSHTEYN,

Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

APPELLANT'S APPENDIX
VOLUME 3 OF 11

Pages 451-661

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Max Borenstein

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David W. Slayton,
Executive Officer/Clerk of Court,
By T. Soto-Thayer, Deputy Clerk

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 *[Assigned to Dept. 2B, Hon. Scott J. Nord]* **PETITIONER'S RESPONSE TO RESPONDENT'S SEPARATE STATEMENT IN SUPPORT OF REQUEST FOR ORDER TO COMPEL FURTHER RESPONSES TO RESPONDENT'S REQUESTS FOR ADMISSION AND INTERROGATORIES**

TO RESPONDENT SOFIYA ALEXANDRA GOLDSHTEYN AND HER ATTORNEY(S) OF RECORD:

Petitioner Max David Borenstein ("Max", "Petitioner", "Responding Party"), by and through his attorneys of record, hereby submits the following Response to the Separate Statement in Support of Request for Order to Compel Further Responses to Respondent's Requests for Admission and Interrogatories filed by Respondent Sofiya Alexandra Goldshteyn ("Sofiya", "Respondent", "Propounding Party") on June 2, 2025 ("Sofiya's Separate Statement").

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REQUEST FOR ADMISSION NO. 6

Request:

"Admit that in 2019, your combined contributions to pension plans, saving, investment, and retirement accounts, exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 6 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court, as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support,

and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court* (1961) 56 Cal.2d 423, 430 (requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

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Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of critical phrases such as "your combined contributions", and "pension plans", and "saving, investment, and retirement accounts". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about the combined contributions of Max and Sofiya (they were, after all, married for the entirety of the calendar year in question) to each type of account, or about the combined contributions of Max, alone, to all the types of accounts listed. It is also unclear whether the RFA refers to all "pension plans, saving, investment, and retirement accounts" in anyone's name, in the names of the Parties together, or in Max's name alone. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple different types of financial contributions—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

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REQUEST FOR ADMISSION NO. 7

Request:

"Admit that in 2020, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 7 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

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Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive,

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or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of critical phrases such as "your combined contributions", and "pension plans", and "saving, investment, and retirement accounts". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about the combined contributions of Max and Sofiya (they were, after all, married for the entirety of the calendar year in question) to each type of account, or about the combined contributions of Max, alone, to all the types of accounts listed. It is also unclear whether the RFA refers to all "pension plans, saving, investment, and retirement accounts" in anyone's name, in the names of the Parties together, or in Max's name alone. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple different types of financial contributions—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

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REQUEST FOR ADMISSION NO. 8

Request:

"Admit that in 2021, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 8 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

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Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

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Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of critical phrases such as "your combined contributions", and "pension plans", and "saving, investment, and retirement accounts". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about the combined contributions of Max and Sofiya (they were, after all, married for the entirety of the calendar year in question) to each type of account, or about the combined contributions of Max, alone, to all the types of accounts listed. It is also unclear whether the RFA refers to all "pension plans, saving, investment, and retirement accounts" in anyone's name, in the names of the Parties together, or in Max's name alone. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple different types of financial contributions—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

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In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 9

Request:

"Admit that in 2022, your combined contributions to pension plans, saving, investment, and retirement accounts exceeded $1,000,000.00."

Response:

Responding Party **objects** to Request No. 9 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

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Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property, the determination of the marital standard of living, the income available for support, and tracing of property.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and in improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

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or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague" and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of critical phrases such as "your combined contributions", and "pension plans", and "saving, investment, and retirement accounts". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about the combined contributions of Max and Sofiya (they were, after all, married during the calendar year in question) to each type of account, or about the combined contributions of Max, alone, to all the types of accounts listed. It is also unclear whether the RFA refers to all "pension plans, saving, investment, and retirement accounts" in anyone's name, in the names of the Parties together, or in Max's name alone. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple different types of financial contributions—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

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REQUEST FOR ADMISSION NO. 10

Request:

"Admit that the monthly amount you propose for spousal support to Respondent is less than the monthly amount you spent on discretionary personal expenses, including travel, luxury goods, dining, and entertainment, during the marriage."

Response:

Responding Party **objects** to Request No. 10 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's monthly discretionary personal expenses, which are extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's monthly discretionary personal expenses are directly relevant to the issues before the Court as, upon information and belief, Petitioner's position is that Respondent should receive less in monthly spousal support that Petitioner's spends on his monthly discretionary

personal expenses. Respondent has requested alimony, so the marital standard of living, income available for support and appropriate adjustments to temporary support are at issue at the trial in this matter. Further, Petitioner's financial circumstances may form the basis for some requests for attorneys' fees and costs in this matter.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request is in improper form is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple different types of expenses—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

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In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objection to this RFA.

REQUEST FOR ADMISSION NO. 11

Request:

"Admit that the unimplanted embryos are Respondent's separate property."

Response:

Responding Party **objects** to Request No. 11 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

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B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusions are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010*; Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting

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at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of the critical phrases "the unimplanted embryos" and "separate property". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about all 20 of the embryos currently held in cryopreservation at Ovation Fertility Storage Solutions, the single one of those embryos that contains Sofiya's genetic material, or some or all of the 19 of those embryos which are the product of Max's sperm and donor eggs. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone (specifically, whether a given piece of property belongs to the marital community or to one or the other of the Parties).

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In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 12

Request:

"Admit that there are no written agreements concerning the existing unimplanted embryos."

Response:

Responding Party **objects** to Request No. 12 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

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Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusions are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object

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simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco*, *supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of the critical phrases "the unimplanted embryos" and "written agreements". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about all 20 of the embryos currently held in cryopreservation at Ovation Fertility Storage Solutions, the single one of those embryos that contains Sofiya's genetic material, or some or all of the 19 of those embryos which are the product of Max's sperm and donor eggs. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly

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decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 13

Request:

"Admit that there are no oral agreements concerning the existing unimplanted embryos."

Response:

Responding Party **objects** to Request No. 13 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague; and,
2. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is

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directly relevant to the issues before the Court.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court*, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is

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served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "vague" and "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of the critical phrases "the unimplanted embryos" and "written agreements". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about all 20 of the embryos currently held in cryopreservation at Ovation Fertility Storage Solutions, the single one of those embryos that contains Sofiya's genetic material, or some or all of the 19 of those embryos which are the product of Max's sperm and donor eggs. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal

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contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 14

Request:

"Admit that since your date of separation, you have transferred funds from community accounts to accounts held solely in your name without prior knowledge or disclosure to Respondent."

Response:

Responding Party **objects** to Request No. 14 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible

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evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered

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"if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to a Request for Admissions. In addition, Petitioner failed to identify which part of the Request he asserts calls for speculation. This Request does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Form. The question asks Petitioner to admit or deny a single fact. It is not compound in violation of the rules as Petitioner objects.

Petitioner's rote assertions of "vague," "calls for speculation," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was

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under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of critical phrases such as "date of separation" and "community accounts". As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. For example, this RFA could be inquiring about anyone's prior knowledge, not necessarily Sofiya's. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone (e.g., the date of separation in a marital dissolution proceeding, the character of a given asset, etc.).

Speculation Objection. Sofiya's Separate Statement cites no authority for either its claim that Max's speculation objection is inappropriate, or its assertion that not specifying which part of the request is speculative constitutes a failure on his part. Regardless, since this RFA asks Max to admit that he transferred funds "without prior knowledge or disclosure to Respondent", one of the many ways this RFA could be read is that it is asking Max whether Sofiya had prior knowledge of something (the RFA does not specify what), it calls for speculation. Additionally, another way this RFA could be read is that the RFA is asking about some third party's prior knowledge, which would also call for speculation on Max's part.

Objection to Improper Form. Though there are many different ways to interpret this vague RFA, all of them attempt to cover at least two subjects in a single subdivided question. As such, this RFA is disjunctive (the subjects being separated by an "or", rather than an "and") and compound and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the

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part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 15

Request:

"Admit that you have made investments with community funds since separation without Respondent's consent."

Response:

Responding Party **objects** to Request No. 15 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by

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Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for legal conclusion and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

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Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks an admission regarding multiple subjects (specifically, whether Max has taken an action during a given period and whether he has done so without Sofiya's consent)—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone (e.g., the date of separation in a marital dissolution proceeding, whether a given piece of property belongs to the marital community or to one or the other of the Parties, etc.).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 16

Request:

"Admit that you were aware of accounts containing community funds solely in your name or control on March 16, 2023, that were not held in an account in the name of the Borenstein-Goldshteyn Family Trust."

Response:

Responding Party **objects** to Request No. 16 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Unintelligible;
2. Calls for legal conclusion; and,

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3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is unintelligible, calls for legal

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conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Unintelligible." As a matter of law, the objection fails: *See Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

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Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Unintelligible Objection. Sofiya misrepresents the Court's holding in *Stanton*—the single piece of authority she cites in support of her position that this objection is improper. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone (e.g., the date of separation in a marital dissolution proceeding, whether a given piece of property belongs to the marital community or to one or the other of the Parties, etc.).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 17

Request:

"Admit that you provided no additional services under the 2022 Overall Term Agreement between Steeplechase Amusements, Inc. and HBO after your asserted date of separation."

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Response:

Responding Party **objects** to Request No. 17 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion;
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

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B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears

reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v.*

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Superior Court (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (Cembrook v. Superior Court of City and County of San Francisco, Supra, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "vague," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. In sum, "the nature of the information sought" was

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not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 18

Request:

"Admit that you applied community tax refunds to your own separate tax liabilities without Respondent's consent."

Response:

Responding Party **objects** to Request No. 18 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion; and,
2. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to

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the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for legal conclusion and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

<u>Improper Assertion of "Calls for Legal Conclusion."</u> Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question

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properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Objection to Improper Form. Because this RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—it is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

REQUEST FOR ADMISSION NO. 20

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Request:

"Admit that you have not fully complied with the terms of the Temporary and Provisional Spousal Support Agreement."

Response:

Responding Party **objects** to Request No. 20 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Calls for legal conclusion.

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's compliance with a temporary agreement, which is extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's compliance with the Temporary and Provisional Spousal Support Agreement is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without

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Respondent's knowledge or consent.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for legal conclusion is without merit.

California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

<u>Improper Assertion of "Calls for Legal Conclusion."</u> Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (*See Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, Supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (*Lieb v. Superior Court In and For Orange County*, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Petitioner's rote assertions of "calls for legal conclusion" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The

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objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objection as "boilerplate", insufficiently specific, or otherwise unjustified.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objection to this RFA.

REQUEST FOR ADMISSION NO. 22

Request:

"Admit that you have not produced any communications with any party regarding any of your claims or defenses, including your claims to credits, reimbursement, allocation, characterization, or separate property contentions (if any)."

Response:

Responding Party **objects** to Request No. 22 of Respondent's Requests for Admission, Set One ("this Request") on the following ground(s):

1. Vague;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Without waiving the foregoing objection(s), as Responding Party understands the substance of this Request, Responding Party **answers** it as follows: Based on the foregoing objections, Responding Party is neither able to admit or deny this Request.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's lack of production of relevant documents, which is extremely relevant in this case. The Code of

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Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's lack of production of relevant documents is directly relevant to the issues before the Court as much of the community funds are in Petitioner's sole control and, therefore, Respondent has no way to access certain or documents information related to community funds except through Petitioner. The issues of this case include the parties' date of separation, what assets are community versus separate property, a post-separation accounting, income available for support and marital standard of living. Petitioner's income derives from a number of sources, many of which he has claimed are wholly or partially separate and upon information and belief, communications to determine when work was performed and income earned, the parties' date of separation and mindset during 2022, etc. are all relevant to these issues.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified,

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boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; *Laddon v. Superior Court* (1950) 167 Cal.App.2d 391; *1880 Corp. v. Superior Court* (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings—Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 430 (1961) requests for admissions), and *Standon Co.* v. *Superior Court* (1990) 225 Cal.App.3d 898, 901 (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Request calls for a legal conclusion in order to avoid answering the Request. A request for admissions may also require an application of law to fact. (See *Burke v. Superior Court* (1969) 71 Cal.2d 276, 282, 78 Cal.Rptr. 481, 455 P.2d 409.) "[W]hen a party is served with a request for admission concerning a legal question properly raised in the pleadings he cannot object simply by asserting that the request calls for a conclusion of law. He should make the admission if he is able to do so and

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does not in good faith intend to contest the issue at trial, thereby 'setting at rest a triable issue.' (*Cembrook v. Superior Court of City and County of San Francisco, Supra*, 56 Cal.2d 423, 429, 15 Cal.Rptr. 127, 364 P.2d 303.) Otherwise he should set forth in detail the reasons why he cannot truthfully admit or deny the request. (Lieb v. Superior Court In and For Orange County, 199 Cal.App.2d 364, 368, 18 Cal.Rptr. 705.)." *Id.*

Improper Form. Petitioner's objection that the request is compound or disjunctive fails— the request asks him to admit only one fact. The list that follows this fact was merely exemplary and he can deny or admit that single fact with one admission or denial.

Petitioner's rote assertions of "vague," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. Sofiya fails to cite any authority for her assertion that Max was under any obligation to "identify a single word, term or description that is 'vague' in this Request". The authority cited by Sofiya in support of her assertion of this objection's impropriety is—not unironically—the very authority which justifies its use in connection with the instant RFA. The basis for this objection was Sofiya's failure to qualify the instant RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this RFA could be reasonably read in a number of different ways which affect the scope of the requested admission. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Though there are many different ways to interpret this vague RFA, all of them attempt to cover at least two subjects in a single subdivided question. As

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such, this RFA is disjunctive (the subjects being separated by multiple instances of the word "or") and compound and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via this RFA: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this RFA.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 1

Interrogatory:

"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."

Response (Request for Admission No. 1):

Insofar as it pertains to Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Burdensome and harassing;
2. Calls for speculation;
3. Seeks documents and/or information protected by the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges;
4. Calls for legal conclusion; and,
5. Improper form (Code of Civil Procedure section 2033.060 (f)).

As Responding Party understands the substance of the Request for Admission to which it

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pertains (Request for Admission No. 1 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

On April 6, 2022, after months of conflict and multiple failed attempts at marital counseling, I informed Sofiya of my intent to end our marriage. Since then, we have led separate lives; living in separate residences, ending our sexual relationship, and limiting our communication to logistical discussions about our dog Munch, our houseplants, and how to ensure we did not cross paths when travelling to and from our two Los Angeles-area homes. In the course of these communications, I remained clear and unwavering in my representations to Sofiya about my intent to end our marriage. Sofiya and I did not continue our sexual relationship or make any attempt to reconcile, nor did we continue to travel together, socialize with one another, celebrate holidays together, or otherwise maintain the appearance of being married. In the months between April 6, 2022 and August 23, 2022, Sofiya repeatedly confirmed her understanding of my decision to end our marriage and actively participated in the logistics of dividing our lives.

The persons with knowledge of these facts are: Mary Kay Cocharo (310-828-2624); Kelly White (310-213-4249); Laura Borenstein (818-613-5729; 5401 Zelzah Ave #110 Encino, CA 91316); Monique Feig (310-877-6941); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); Klavdia Goldshteyn (323-839-9960; 8505 Gulana Ave Unit 4106, Playa Del Rey, CA 90293).

The documents and other tangible things that support my response are the text messages which I have already produced (specifically, in response to Demand 42 of the Demand for Production (Set Two) propounded by Propounding Party on March 14, 2024, to which Responding Party produced responsive documents on May 6, 2024).

<u>Sofiya's Reasons for Compelling Further Response:</u>

A.

<u>Good Cause for Discovery</u>.

This Request seeks information related to the parties' date of separation,

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which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

The date of separation is directly relevant to the issues before the Court as it directly impacts which property is considered community property versus separate property.

Other than vaguely referring to text messages produced by Petitioner, Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is burdensome and harassing, calls

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for speculation, seeks documents and/or information protected by the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Burdensome and Harassing." This objection fails as a matter of law. The objections of "burdensome" and "harassing" are both meritless and frivolous. There is a "burden" inherent in the discovery process in all lawsuits, and a general "objection" of burden is insufficient to deny a requesting party's rights under the Civil Discovery Act. *West Pico Furniture Co.* v. *Superior Court*, 56 Cal.App.2d 418 (1961). Petitioner confuses burden with effort.

As further noted in *Cal. Prac. Guide: Civ. Pro. Before Trial* (TRG, 2007), § 8:1476, in connection with discovery requests, responding counsel should:

Avoid raising the "burdensome and oppressive" objection unless the facts are *truly unusual* (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, *state the reasons* for your objection. [Italics in original.]

Id.

The statutory test for a protective order on the basis of "burden" is set forth in CCP § 2017(c):

The court shall limit the scope of discovery if it determines that the burden, expense, or intrusiveness of that discovery ***clearly outweighs*** the likelihood that the information sought will lead to the discovery of admissible evidence.

Id. (emphasis added).

The California Supreme Court has held that before a trial court may restrict a

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discovery method for being unduly burdensome, there must be evidence in the record to sustain that conclusion. Indeed, there must be evidence specifically quantifying the burden imposed on the responding party. *West Pico Furniture Co.* v. *Superior Court,* 56 Cal.App.2d 418, 418-419; *Cembrookv. Superior Court* (1961) 56 Cal.2d 423, 428.

Here, Petitioner's written response does not identify any type of burden and makes no effort to specify the same. The objections should be overruled.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Failure to Produce a Privilege Log: Petitioner objected to this request on the basis of the attorney-client, attorney work product, psychotherapist-patient, and clergy-penitent privileges, but Petitioner failed to produce a Privilege Log along with the written responses.

The failure to produce a Privilege Log under these circumstances is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more responsive documents is protected by a privilege, the party must provide a privilege log that "identif[ies] with particularity each document the responding party claims is protected from
disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*, 122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new

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log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998). Petitioner has failed to produce any document resembling a privilege log.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive

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request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertions of "calls for speculation," "calls for legal conclusion," and "improper form" are an abuse of the discovery process despite numerous good faith offers to meet and confer. The objections should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Sofiya's Separate Statement appears to be so fixated with obtaining an order overruling Max's objections that it entirely neglects to address whether the substance of his actual answer has answered the question propounded. Specifically, and most fatally, it fails to identify any actual deficiencies in said answer that would warrant an order compelling a further response. This is indicative of Sofiya's uncooperative posture to the discovery process generally—a continual barrage of form over any substance such that she would rather make hollow accusations in an effort to attempt to get the optical upper hand on Max (incurring thousands of dollars in fees in the process) than pause to contemplate whether her inquiries have actually been satisfied. Because of this continued and systematic failure alone, the Court should deny Sofiya's requests related to this response as moot. This is the case without even considering the myriad other procedural and code compliance failures in Sofiya's motion.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 2

Interrogatory:

"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."

Response (Request for Admission No. 2):

Insofar as it pertains to Request for Admission No. 2 of the Requests for Admission

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served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 2 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question to be asking me if I believe I am due any reimbursements for my separate property used to acquire or capitally improve community property, I answer as follows: I believe I am due reimbursements for the use of my separate property income received during the marriage for work performed prior to marriage that was used to acquire community property, like the Clover residence occupied by Sofiya. The documents and facts that support this belief have already been provided to Sofiya via my forensic accountants when they provided my 2640 reimbursement schedule and the backup documents thereto, and will be supplemented by me in my forthcoming responses to Demand for Production (Set Three), propounded by Propounding Party on March 29, 2025. In addition to myself, the people who have knowledge of these facts are Eric Feig (8730 Wilshire Blvd., Suite 350, Beverly Hills, CA 90211; 424-274-3830); Sofiya Goldshteyn (310-470-9179; 11540 Clover Avenue, Los Angeles, CA 90066); and Reichman & Associates, P.C. (6420 Wilshire Blvd., Suite 720, Los Angeles, CA 90048; 323-549-2160), whom I have retained as forensic accountants in connection with this marital dissolution proceeding.

<u>Sofiya's Reasons for Compelling Further Response:</u>

A. Good Cause for Discovery.

This Request seeks information related to reimbursements, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the

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determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Whether Petitioner contends that reimbursements are owed to him is directly relevant to the issues before the Court as it directly impacts the analysis of community property versus separate property, the post-separation accounting, the financial circumstances of both parties, etc.

Other than vaguely referring to documents provided to Respondent via Petitioner's forensic accountants, Petitioner failed to properly identify any of the documents or tangible things that support his response. Petitioner also stated that he will be supplementing his documents, but has failed to do so.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process. Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the

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discovery of

admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391;

1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Sofiya's Separate Statement appears to be so fixated with obtaining an order overruling Max's objections that it entirely neglects to address whether the substance of his actual answer has answered the question propounded. Specifically, and most fatally, it fails to identify any actual deficiencies in said answer that would warrant an order compelling a further response. This is indicative of Sofiya's uncooperative posture to the discovery process generally—a continual barrage of form over any substance such that she would rather make hollow accusations in an effort to attempt to get the optical upper hand on Max (incurring thousands of dollars in fees in the process) than pause to contemplate whether her inquiries have actually been satisfied. Because of this continued and systematic failure alone, the Court should deny Sofiya's requests related to this response as moot. This is the case without even considering the myriad other procedural and code compliance failures in Sofiya's motion.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 3

Interrogatory:

"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

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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."

Response (Request for Admission No. 3):

Insofar as it pertains to Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 3 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

As I understand the question, I am to explain what property exists that I claim to be separate, which I understand to be property acquired by me prior to marriage, after separation, or during the marriage by gift, bequest, devise or descent. Based on the foregoing understanding of the question, I respond as follows:

I was a successful writer prior to marrying Sofiya. For standalone projects, I worked on multiple projects, some of which were completed prior to marriage, some of which were commenced prior to marriage but completed during the marriage, and some of which were commenced and completed after marriage. The list of the projects and the corresponding percentages of before marriage and during marriage and after marriage work, as applicable, based on my best estimate, have already been provided to Sofiya through my forensic accountants and are currently being supplemented through my forthcoming responses to Demand for Production (Set Three), propounded by Propounding Party on March 29, 2025. For ongoing projects—like projects that require me to continually preform services not limited to just one script—the work performed after Sofiya and I separated and my compensation therefore is my separate property. Additionally, my father passed away in 2022. I inherited some personal items

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from him which are my separate property. Additionally, my personal furnishings whenever acquired are my separate property. There are also items of personal property, like furniture and household items, that I acquired prior to marriage that are my separate property. Finally, the contents of the home I lived in on PCH before it burned down were my separate property as they were either personal furnishings or items I acquired with my separate property earnings after Sofiya and I separated. It would be impossible to go into the level of detail called for in the question for all separate property (each kitchen utensil, each item of clothing, for example), but generally, as to intellectual property, the persons with knowledge of these facts are Kevin Falls (EP), Lindsey Springer (Executive), Alex Garcia, and Gareth Edwards. As to my services contracts with HBO the persons with knowledge of these facts are Jim Hecht (EP), the Cast and Crew of Winning Time, and HBO Legal. As to inherited property, the persons with knowledge of these facts are my parents.

<u>Sofiya's Reasons for Compelling Further Response:</u>

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

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Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

Other than vaguely referring to documents provided to Respondent via Petitioner's forensic accountants, Petitioner failed to properly identify any of the documents or tangible things that support his response. Petitioner also stated that he will be supplementing his documents, but has failed to do so.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391;
1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The

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objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Sofiya's Separate Statement appears to be so fixated with obtaining an order overruling Max's objections that it entirely neglects to address whether the substance of his actual answer has answered the question propounded. Specifically, and most fatally, it fails to identify any actual deficiencies in said answer that would warrant an order compelling a further response. This is indicative of Sofiya's uncooperative posture to the discovery process generally—a continual barrage of form over any substance such that she would rather make hollow accusations in an effort to attempt to get the optical upper hand on Max (incurring thousands of dollars in fees in the process) than pause to contemplate whether her inquiries have actually been satisfied. Because of this continued and systematic failure alone, the Court should deny Sofiya's requests related to this response as moot. This is the case without even considering the myriad other procedural and code compliance failures in Sofiya's motion.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 6

Interrogatory:

"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."

Response (Request for Admission No. 6):

Insofar as it pertains to Request for Admission No. 6 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,

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3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon

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which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound,

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conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 7

Interrogatory:

"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

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DOCUMENT or thing."

Response (Request for Admission No. 7):

Insofar as it pertains to Request for Admission No. 7 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things

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that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process. Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing

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expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 8

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Interrogatory:

"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."

Response (Request for Admission No. 8):

Insofar as it pertains to Request for Admission No. 8 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity

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and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request

is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the

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Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

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Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 9

Interrogatory:

"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."

Response (Request for Admission No. 9):

Insofar as it pertains to Request for Admission No. 9 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's combined contributions during the marriage, which are extremely relevant in this case. The Code of Civil Procedure states:

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Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's combined contributions during the marriage are directly relevant to the issues before the Court as it impacts the analysis of community property versus separate property.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

<u>RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1</u>. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and is improper form are without merit. California allows for a broad scope of discovery

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and a discovery request

is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

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Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 10

Interrogatory:

"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."

Response (Request for Admission No. 10):

Insofar as it pertains to Request for Admission No. 10 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

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1. Calls for speculation;

2. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's monthly discretionary personal expenses, which are extremely relevant in this case, which are extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's monthly discretionary personal expenses are directly relevant to the issues before the Court as, upon information and belief, Petitioner's position is that Respondent should receive less in monthly spousal support that Petitioner's spends on his monthly discretionary personal expenses.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1.

Petitioner's individual objections to the Requests for Admission are not valid

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objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is
relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court
(1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f). "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation" and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

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Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 11

Interrogatory:

"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."

Response (Request for Admission No. 11):

Insofar as it pertains to Request for Admission No. 11 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Sofiya's Reasons for Compelling Further Response:

A.

Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The

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Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of

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admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];

Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out

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what the case against him is about than it was under the old practice. ... To the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

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In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 12

Interrogatory:

"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."

Response (Request for Admission No. 12):

Insofar as it pertains to Request for Admission No. 12 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

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Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior

Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an

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intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];
Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)
;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the

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case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969)

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 13

Interrogatory:

"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

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(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."

Response (Request for Admission No. 13):

Insofar as it pertains to Request for Admission No. 13 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague; and,
3. Calls for legal conclusion.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to the unimplanted embryos, which Respondent claims are Respondent's separate property and, therefore, extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Whether the unimplanted embryos are separate property or community property is directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support

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his response. B.

Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings—Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was

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"vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory.

"Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];

Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are

used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use

of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation," "vague," and "improper

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form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 14

Interrogatory:

"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."

Response (Request for Admission No. 14):

Insofar as it pertains to Request for Admission No. 14 of the Requests for Admission

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served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Vague;
2. Calls for speculation;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

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RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is vague, calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply."

California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate

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objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];

Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are

used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use

of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d

409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and

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is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "vague," "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects (the subjects being separated by an "or")—this interrogatory is both compound and disjunctive, and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 15

Interrogatory:

"Is your response to each request for admission served with these interrogatories an unqualified

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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."

Response (Request for Admission No. 15):

Insofar as it pertains to Request for Admission No. 15 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion; and,
3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the

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Court as much of the community funds are solely in Petitioner's control and have been used solely by

Petitioner without Respondent's knowledge or consent. Petitioner failed to properly identify any of the documents or tangible things that support

his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon

v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid

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answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

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Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 16

Interrogatory:

"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."

Response (Request for Admission No. 16):

Insofar as it pertains to Request for Admission No. 16 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Unintelligible;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

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A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

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Petitioner's objections that this Request calls for speculation, is unintelligible, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Unintelligible." As a matter of law, the objection fails: *See Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction).

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To

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the extent that interrogatories are used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "unintelligible," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Unintelligible Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number

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of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 17

Interrogatory:

"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."

Response (Request for Admission No. 17):

Insofar as it pertains to Request for Admission No. 17 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion;
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

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A. Good Cause for Discovery.

This Request seeks information related to Petitioner's income and whether it is considered community property, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's income as a result of his contract with HBO is directly relevant to the issues before the Court as it may be community property, but is solely in Petitioner's control.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and

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must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, is vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court,
(1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e.,

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enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];
Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)
;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case
against him is about than it was under the old practice. ... To the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

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Max's Response to Sofiya's Reasons for Compelling Further Response:

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 18

Interrogatory:

"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."

Response (Request for Admission No. 18):

Insofar as it pertains to Request for Admission No. 18 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1

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on the following grounds:

1. Calls for speculation;

2. Calls for legal conclusion; and,

3. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's use of community funds, which is extremely relevant in this case. The Code of Civil Procedure states:

> Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.
>
> Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's use of community funds is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

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Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305]; Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)

;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To

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the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects (the subjects being separated

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by an "or")—this interrogatory is both compound and disjunctive, and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 20

Interrogatory:

"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."

Response (Request for Admission No. 20):

Insofar as it pertains to Request for Admission No. 20 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Calls for legal conclusion.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's compliance with a temporary agreement, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the

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discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Petitioner's compliance with the Temporary and Provisional Spousal Support Agreement is directly relevant to the issues before the Court as much of the community funds are solely in Petitioner's control and have been used solely by Petitioner without Respondent's knowledge or consent.

Petitioner failed to properly identify any of the documents or tangible things that support his response.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation and calls for legal conclusion are without merit. California allows for a broad scope of discovery and a discovery

request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

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Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (Singer v. Superior Court, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];
Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)
;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Petitioner's rote assertion of "calls for speculation" and "calls for legal conclusion" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

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Max's Response to Sofiya's Reasons for Compelling Further Response:

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 21

Interrogatory:

"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."

Response (Request for Admission No. 21):

Insofar as it pertains to Request for Admission No. 21 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation.

As Responding Party understands the substance of the Request for Admission to which it pertains (Request for Admission No. 21 of the Requests for Admission served by Propounding Party on March 14, 2025), Responding Party provides the following **answer** to Interrogatory 17.1:

The facts on which I base this response are set forth on Page 2 of the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1. In relevant part, said

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stipulation and order provides that: "Respondent shall be imputed with employment income of $7,000 per month for all purposes in this case, including pendente lite requests for orders, trial, and post-trial requests for order, if any, for all of which Respondent's imputation of employment income of $7,000 per months shall be res judicata." The documents and other tangible things that support my response are the stipulation and order entered on June 28, 2024, a copy of which is attached hereto as Exhibit 1.

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information whether Petitioner admits that Respondent is not yet self- supporting, which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property. CCP § 2017.010.

Other than vaguely referring to the stipulation and order entered on June 28, 2024, Petitioner failed to properly identify any of the documents or tangible things that support his

response.

B.

Invalid Objections.

Petitioner's rote list of objections is almost identical to every objection raised

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to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objection that this Request calls for speculation is without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391;

1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Petitioner's rote assertion of "calls for speculation" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Sofiya's Separate Statement appears to be so fixated with obtaining an order overruling Max's objections that it entirely neglects to address whether the substance of his actual answer has answered the question propounded. Specifically, and most fatally, it fails to identify any actual deficiencies in said answer that would warrant an order compelling a further response. This is indicative of Sofiya's uncooperative posture to the discovery process generally—a continual barrage of form over any substance such that she would rather make hollow accusations in an effort to attempt to get the optical upper hand on Max (incurring thousands of dollars in fees in the process) than pause to contemplate whether her inquiries have actually been satisfied. Because of this continued and systematic failure alone, the Court should deny Sofiya's requests related to this response as moot. This is the case without even

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considering the myriad other procedural and code compliance failures in Sofiya's motion.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 22

Interrogatory:

"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."

Response (Request for Admission No. 22):

Insofar as it pertains to Request for Admission No. 22 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Vague;
3. Calls for legal conclusion; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's lack of production of relevant documents, which is extremely relevant in this case. The Code of Civil Procedure states: Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence.

Discovery may relate to the claim or defense of the party-seeking discovery

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or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's lack of production of relevant documents is directly relevant to the issues before the Court as much of the community funds are in Petitioner's sole control and, therefore, Respondent has no way to access certain or documents information related to community funds except through Petitioner.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request is calls for speculation, vague, calls for legal conclusion, and is improper form are without merit. California allows for a broad scope of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition,

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Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Calls for Legal Conclusion." Petitioner cannot simply state that this Interrogatory calls for a legal conclusion in order to avoid answering the Interrogatory. "Discovery necessarily serves the function of 'testing the pleadings,' i.e., enabling a party to determine what his opponent's contentions are and what facts he relies upon to support his contentions. (*Singer v. Superior Court*, 54 Cal.2d 318, 323-325 [5 Cal.Rptr. 697, 353 P.2d 305];
Universal Underwriters Ins. Co. v. Superior Court, 250 Cal.App.2d 722, 728 [58 Cal.Rptr 870].)
;[T]o say that 'contentions' are not a proper subject of interrogatories is to subvert the whole theory of the [discovery] rules and to make it more difficult for a party to find out what the case against him is about than it was under the old practice. ... To the extent that interrogatories are
used to clarify the contentions of the parties, they are an adjunct to the pleadings, ... Liberal use
of interrogatories for the purpose of clarifying and narrowing the issues made by the

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pleadings should be permitted and encouraged by the courts. … a defendant in California courts may be required through discovery to disclose not only the evidentiary facts underlying his affirmative defenses … and denials … but also whether or not he makes a particular contention, either as to the facts or as to the possible issues in the case. … A plaintiff, of course, is subject to analogous requirements." *Burke v. Superior Ct. of Sacramento Cnty.,* 71 Cal. 2d 276, 281–82, 455 P.2d 409 (1969).

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," "calls for legal conclusion," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

As set forth below, Max rejects Sofiya's characterization of his objections as "boilerplate", insufficiently specific, or otherwise unjustified.

Speculation Objection. To the extent this interrogatory asks Max to identify persons with knowledge of the facts stated therein, it calls for speculation.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects (the subjects being separated by an "or")—this interrogatory is both compound and disjunctive, and, therefore, runs afoul of

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Code of Civil Procedure section 2033.060(f).

Legal Conclusion Objection. While the *Burke* court authorized discovery of legal contentions—i.e., the legal positions taken by a party in a given action—it does not authorize what Sofiya has attempted to do via the RFA on which this interrogatory is premised: seek an opinion on an ultimate issue properly decided by the Court, alone.

In light of the foregoing—and in the absence of a good faith meet and confer effort on the part of Sofiya's counsel—Max maintains his objections to this interrogatory.

INTERROGATORY NO 17.1 – REQUEST FOR ADMISSION NO. 23

Interrogatory:

"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."

Response (Request for Admission No. 23):

Insofar as it pertains to Request for Admission No. 23 of the Requests for Admission served by Propounding Party on March 14, 2025, Responding Party **objects** to Interrogatory 17.1 on the following grounds:

1. Calls for speculation;
2. Seeks documents and/or information protected by the psychotherapist-patient privilege;
3. Vague; and,
4. Improper form (Code of Civil Procedure section 2033.060(f)).

Sofiya's Reasons for Compelling Further Response:

A. Good Cause for Discovery.

This Request seeks information related to Petitioner's own statements,

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which is extremely relevant in this case. The Code of Civil Procedure states:

Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may relate to the claim or defense of the party-seeking discovery or of any other party to the action. Discovery may be obtained of the identity and location of persons having knowledge of any discoverable matter, as well as of the existence, description, nature, custody, condition and location of any document, tangible thing, or land or other property.

CCP § 2017.010.

Petitioner's personal journals which contain his own statements are directly relevant to the issues before the Court.

Petitioner failed to properly identify any of the documents or tangible things that support his response, including but not limited to his personal journals.

B. Invalid Objections.

RFA Objections cannot be used to refuse to answer Form Interrogatory No. 17.1. Petitioner's individual objections to the Requests for Admission are not valid objections to refuse to answer Form Interrogatory No. 17.1.

Petitioner's rote list of objections is almost identical to every objection raised to each Request. Objections must convey with specificity the grounds upon which they are made and must be made with substantial justification. CCP § 2033.230(b). Providing responses that consist primarily of unjustified, boilerplate objections may constitute misuse of the discovery process.

Petitioner's objections that this Request calls for speculation, seeks documents and/or information protected by the psychotherapist-patient privilege, is vague, and is improper form are without merit. California allows for a broad scope

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of discovery and a discovery request is relevant so long as it pertains to the subject matter of the action or appears reasonably calculated to lead to the discovery of admissible evidence. CCP § 2017.010; Laddon v. Superior Court (1950) 167 Cal.App.2d 391; 1880 Corp. v. Superior Court, (1962) 57 Cal.App.2d 840.

Improper Assertion of "Calls for Speculation." Speculation is an inappropriate objection and one that cannot be made in order to avoid responding to an Interrogatory. In addition, Petitioner failed to identify which part of the Interrogatory he asserts calls for speculation. This Interrogatory does not call for speculation.

Improper Assertion of Psychotherapist-Patient Privilege: Pursuant to Cal. Evid. Code § 1014, the psychotherapist patient-privilege applies to confidential communications between a patient and the patient's psychotherapist. Petitioner's personal journal entries do not qualify as a confidential communication between patient and psychotherapist. See Cal. Evid. Code § 1012.

Failure to Produce a Privilege Log: Petitioner objected to this request on the basis of the the attorney-client, attorney, work product, psychotherapist-patient, and clergy-penitent privileges, but Petitioner failed to produce a Privilege Log along with the written responses.

The failure to produce a Privilege Log under these circumstances is a violation of Petitioner's obligations under the Civil Discovery Act. If a party believes that one or more

responsive documents is protected by a privilege, the party must provide a privilege log that

"identif[ies] with particularity each document the responding party claims is protected from disclosure by a privilege and provide sufficient factual information for the propounding party and [trial] court to evaluate whether the claim [of privilege] has merit." *Catalina Island Yacht Club v. Superior Court*, 242 Cal.App.4th 1116, 1130 (2015); *see also People ex rel. Lockyer v. Superior Court*,

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122 Cal.App.4th 1060, 1073-1074 (2004).

The privilege log must be sufficiently specific to allow the court to determine "whether the document is or is not [in] fact privileged." *Wellpoint Health Networks, Inc. v. Sup Ct.*, 59 Cal.App.4th 110, 130 (1997). If the log is not sufficiently specific, the trial court may order the objecting party to prepare a new log containing more information about the nature of the document in question. *Kaiser Foundation Hospital v. Superior Court*, 66 Cal.App.4th 1217, 1228 (1998). Petitioner has failed to produce any document resembling a privilege log.

Improper Assertion of "Vague." As a matter of law, this objection fails: "vague" is not a valid objection to an inspection demand unless "the ambiguity precludes an intelligent reply." California Judges Benchbook: Civil Proceedings— Discovery (Cal CJER 1994), §15.25, p. 241, citing *Cembrook v. Superior Court*, 56 Cal.2d 423, 430 (1961) (requests for admissions), and *Standon Co.* v. *Superior Court*, 225 Cal.App.3d 898, 901 (1990) (an objection to a request for "any and all bills ... evidencing expenses ... incurred" based on the ground that the request was "vague, ambiguous, and unintelligible" would be untenable and subject to sanction); *see also Deyo* v. *Kilbourne* (1978) 84 Cal.App.3d 771, 783 (an discovery request must be answered "if the nature of the information sought is apparent."). In addition, Petitioner has failed to identify a single word, term or description that is "vague" in this Request.

Improper Assertion of "Improper Form." Pursuant to Cal. Civ. Proc. Code § 2033.060(f), "No request for admission shall contain subparts, or a compound, conjunctive, or disjunctive request." As this Request does not contain subparts, and is not a compound, conjunctive, or disjunctive request, it is proper.

Petitioner's rote assertion of "calls for speculation," "vague," and "improper form" is an abuse of the discovery process despite numerous good faith offers to meet and confer. The objection should be overruled and a sanction imposed.

Max's Response to Sofiya's Reasons for Compelling Further Response:

Speculation Objection. To the extent this interrogatory asks Max to identify persons with

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knowledge of the facts stated therein, it calls for speculation.

Privilege Objection. Sofiya's assertion that the Psychotherapist-Patient privilege does not apply here is inaccurate. While Sofiya is asking the Court to deem it both reasonable and not an abuse of the discovery process to request that Max contact his therapist, obtain her files, review them for any mention of his most interpersonal and private thoughts and log them for Sofiya, the Code, the decisional authority and the privilege do not so require. Moreover, had Sofiya's attorneys met and conferred with Max's attorney in good faith in connection with this interrogatory, they could have discussed this interrogatory and its objections and worked out a reasonable resolution. Sofiya's failure to meet and confer robbed Max of this chance and now burdens the Court.

Vagueness Objection. The basis for this objection was Sofiya's failure to qualify the underlying RFA with any definitions, leaving Max to speculate as to the possible meanings of one or more critical phrases. As a result, this interrogatory could be reasonably read in a number of different ways which affect the scope of the requested response. In sum, "the nature of the information sought" was not apparent, and its "ambiguity precludes an intelligent reply".

Objection to Improper Form. Because its underlying RFA does not limit itself to a single subject—but, rather, seeks admissions regarding multiple subjects—this interrogatory is conjunctive and, therefore, runs afoul of Code of Civil Procedure section 2033.060(f).

Respectfully Submitted: LAW OFFICES OF KAPLAN, TROPE & GEKHT

DATED: 07/24/2025 BY: _____

Garry M. Gekht, Esq.
Attorneys for Petitioner,
Max David Borenstein

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Los Angeles, CA 90024
(310) 473-0798

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Compel Further filed by Respondent on June 16, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch, Anne Grover

The parties are sworn.

The matter is heard and argued.

The Court makes the following order:

Respondent has filed two Motion's to Compel Further, both of those motions are denied.

Respondent shall pay directly to Petitioner's attorney of record the sum of $3,500.00 as and for attorney's fees for both motions, payable by September 5, 2025.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Compel Initial filed by Respondent on June 16, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch, Anne Grover

The parties are sworn.

The matter is heard and argued.

The Court rules the following:

Petitioner's Motion to Compel is granted.

Petitioner is ordered to comply with the demands order numbers: 1-3, 4, 6, 9, 10, 14, 16, 18, 24, 27, 28, 30, 31, 33, 42-46, 50, 51, 55, 67, and 70 without any objection by September 5, 2025.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Compel Further Motion to Compel Further Responses and Request for Sanctions filed by Respondent on June 2, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch, Anne Grover

The parties are sworn.

The matter is heard and argued.

The Court makes the following order:

Respondent has filed two Motion's to Compel Further, both of those motions are denied.

Respondent shall pay directly to Petitioner's attorney of record the sum of $3,500.00 as and for attorney's fees for both motions, payable by September 5, 2025.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Compel Initial Motion to Compel Compliance filed by Respondent on June 6, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch, Anne Grover

The parties are sworn.

The matter is heard and argued.

The Court rules the following:

Petitioner's Motion to Compel is granted.

Petitioner is ordered to comply with the demands order numbers: 1-3, 4, 6, 9, 10, 14, 16, 18, 24, 27, 28, 30, 31, 33, 42-46, 50, 51, 55, 67, and 70 without any objection by September 5, 2025.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Compel Initial Motion to Compel Deposition Production and Request for Sanctions filed by Petitioner on May 5, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent
Anne Grover, Attorney for Respondent

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch, Anne Grover

Pursuant to the stipulation of the parties this matter is off calendar. A written stipulation has been filed.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2B,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

August 6, 2025
8:30 AM

Honorable Scott J. Nord, Judge

S. Reyes, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: Trial Setting Conference

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney

The matter is called for hearing.

LACourtConnect appearances by:

Jimmy Ray Howell, Jason P. Koch

The parties are sworn.

The Court and the parties confer regarding their readiness for Trial.

The Petitioner stipulates to a deposition on September 5, 2025.

The parties stipulate all discovery shall be finished by September 5, 2025 the end of business day, except expert depositions.

The Court orders the following:

The Trial Setting Conference is continued to September 19, 2025 at 8:30 AM in Stanley Mosk Dept. - 2.

Time Estimate for Trial is seven days.

Notice is waived.

Received: 8/6/2025 8:00 AM

GARRY M. GEKHT, ESQ. (SBN 321424)
LAW OFFICES OF KAPLAN, TROPE & GEKHT
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County of Los Angeles
8/7/2025 2:27 PM
David W. Slayton
Executive Officer/Clerk of Court,
By B. Nguyen, Deputy Clerk

Attorneys for Petitioner,
MAX DAVID BORENSTEIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LAW OFFICES OF KAPLAN, TROPE & GEKHT
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In re the Marriage of: Petitioner: MAX DAVID BORENSTEIN and Respondent: SOFIYA ALEXANDRA GOLDSHTEYN	CASE NO. 22STFL08826 [*Assigned to the Honorable Judge Nord, Dept. "2B"*] **STIPULATION AND ORDER RE: PETITIONER'S MOTION TO COMPEL RE: DOCUMENT PRODUCTION AT RESPONDENT'S DEPOSITION**

WHEREAS, on May 5, 2025, Petitioner, MAX BORENSTEIN ("Max"), filed a Motion to Compel Respondent, SOFIYA GOLDSHTEYN's ("Sofiya") Deposition Production and Request for Sanctions ("MTC"), which MTC is currently set for hearing on August 6, 2025, in Department 2B of the Los Angeles Superior Court, Central District; and

WHEREAS, Max and Sofiya met and conferred through counsel and wish to resolve the MTC via stipulated order;

///

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NOW, THEREFORE, IT IS HEREBY STIPULATED by and between Petitioner, MAX DAVID BORENSTEIN (hereinafter referred to as the "Petitioner" or "Max") appearing personally and by and through his counsel of record, Garry M. Gekht, Esq., of the Law Offices of Kaplan, Trope & Gekht, and Respondent, SOFIYA ALEXANDRA GOLDSHTEYN (hereinafter referred to as the "Respondent" or "Sofiya"), appearing personally and by and through her co-counsel of record, J.R. Howell, Esq., for Law Office of J.R. Howell, as follows:

1. On or before September 5, 2025, Sofiya shall produce:

a) Code compliant, verified, written responses, without objections (except as to those objections based on the doctor-patient, psychotherapist-patient, clergy-penitent and attorney-client privileges and the attorney work product doctrine) to the document request contained in Max's First Amended Notice of Deposition of Respondent and Request for Production of Documents Thereat; and

b) Any and all documents responsive to Max's First Amended Notice of Deposition of Respondent that have not been previously produced by Sofiya in this action responsive to formal discovery; and

c) As to any documents previously produced by Sofiya in this matter responsive to formal discovery, such documents may be produced by reference to their bates stamp without having to reproduce them.

2. Max's request for sanctions contained in the MTC shall be reserved to the time of trial or settlement.

3. Max shall request that the Court take his MTC off calendar upon entry of the herein Stipulation and Order.

4. Each of the Parties has entered into the herein Stipulation and Order voluntarily and free of any duress or undue influence.

5. The herein Stipulation and Order shall be effective forthwith upon signing by the Parties and their respective counsel (as applicable) and shall not depend upon its processing at Court to become effective.

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd, Suite 1250
Los Angeles, CA 90024
(310) 473-0798

6. Facsimile and/or electronic signatures shall be accepted in lieu of originals, and this document can be signed in multiple parts, and each signature will be deemed an original, without all signatures necessarily having to appear on the same signature page.

IT IS SO STIPULATED:

DATED: August ____, 2025 By: Max Borenstein (Aug 6, 2025 07:20:40 PDT)
MAX DAVID BORENSTEIN, PETITIONER

DATED: August 5, 2025 By: Sofiya A. Goldshteyn (Aug 5, 2025 17:56:55 PDT)
SOFIYA ALEXANDRA GOLDSHTEYN, RESPONDENT

APPROVED AS TO FORM ONLY AS CONFORMING TO THE STIPULATION OF THE PARTIES:

DATED: August 6, 2025 LAW OFFICES OF KAPLAN, TROPE & GEKHT

By: _____
Garry M. Gekht, Esq.
Attorney for Petitioner,
MAX DAVID BORENSTEIN

DATED: August 5, 2025 LAW OFFICE OF J.R. HOWELL

By: _____
J. R. Howell, Esq.
Attorney for Respondent,
SOFIYA ALEXANDRA GOLDSHTEYN

ORDER

IT IS SO ORDERED.

DATED: 08/07/2025

Scott J. Nord
JUDGE
JUDGE OF THE LOS ANGELES SUPERIOR COURT

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Blvd, Suite 1250
Los Angeles, CA 90024
(310) 473-0798

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 2

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

September 19, 2025
8:30 AM

Honorable Shelley Kaufman, Judge

R. Gutierrez, Judicial Assistant | Not Reported, Court Reporter

---

NATURE OF PROCEEDINGS: Trial Setting Conference

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Sofiya Alexandra Goldshteyn, Respondent
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Anne Grover, Attorney for Respondent via LACourtConnect
Jason P. Koch, Attorney for Respondent via LACourtConnect

The matter is called for hearing.

On the Court's own motion, the Trial is being transferred back to Stanley Mosk Dept. 35, the Honorable Scott J. Nord, Judge presiding.

Based on the aforementioned, parties are directed to Stanley Mosk Dept. 35 forthwith for further scheduling conference.

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 35, Stanley Mosk Dept. - 35,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

September 19, 2025
8:30 AM

Honorable Scott J. Nord, Judge

I. Ramirez, Judicial Assistant

Jaime Derderian (#14258), Court Reporter

NATURE OF PROCEEDINGS: Trial Setting Conference Time estimate for trial is seven days

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Sofiya Alexandra Goldshteyn, Respondent
Garry Mark Gekht, Attorney for Petitioner via LACourtConnect
Jimmy Ray Howell, Attorney for Respondent via LACourtConnect
Anne Grover, Attorney for Respondent via LACourtConnect
Jason P. Koch, Associated Attorney via LACourtConnect

The matter is called for hearing.

Court and counsel confer.

After conferring with counsel, the Court sets the eight-day estimated trial.

The Court sets the case for Trial on February 24, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on February 25, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on February 26, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on February 27, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on March 3, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on March 4, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on March 5, 2026 at 8:30 AM in Department 35.

The Court sets the case for Trial on March 6, 2026 at 8:30 AM in Department 35.

September 19, 2025
8:30 AM

The Court orders all parties and counsel are ordered to appear in person for the trial.

Parties are ordered to update their Income and Expense reports.

Court reporter fees are $191.00 each.

The Court orders the parties to attend Mandatory Settlement Conference on Monday December 29, 2025 at 8:30 AM in Department F at the Santa Monica Courthouse.

Notice is waived.

EVIDENTIARY HEARING and/or TRIAL ORDERS

NAME OF CASE	CASE NUMBER	HEARING
BORENSTEIN V GOLDSHTECH	22STFL08026	☒ TRIAL ☐ EV. HEARING

Evidentiary Hearing and/or Trial in this case is set in Department 35 as follows:

HEARING	Date 2/24 - 27/26 3/3 - 3/6/2026	Time 8:30 ☒ AM ☐ PM

FILED
Superior Court of California
County of Los Angeles
SEP 19 2025
David W. Slayton, Executive Officer/Clerk of Court
By: I. Ramirez, Deputy

Counsel and Parties are ORDERED to:

[X] Be physically present at Trial.

[X] Serve and File current Income and Expense Declarations with last 3 pay stubs, profit & loss statement and last filed tax return (cross out social security numbers) no less than 10 days prior to Trial. Fully comply with Family Code §3665, L.A. County Local Rule 5.9, and Cal. Rule of Court 5.427(d)(1).

[X] Bring Tax Returns to the Hearing/Trial for the following years 2023 and 2024 or W2 and/or or 1099 statements for those years if no tax return was filed. _____

[X] Serve and File witness lists no less than 10 days prior to Trial, identifying area of testimony of each.

[X] Serve and File exhibits lists no less than 10 days prior to Trial, Be specific. Petitioner's exhibits shall be listed numerically beginning with "1"; Respondent's exhibits shall be listed alphabetically, beginning with "A"; upon agreement of Counsel/Parties, exhibits may be numbered when identified and admitted. Bring to court three (3) copies of each and every exhibit you plan to present at the trial/hearing. Individual exhibits exceeding 5 pages must be internally paginated.

[X] Serve and File Trial Briefs no less than 10 days prior to Trial or Evidentiary Hearing. Not to exceed 10 pages.

[X] Bring Proof of Service of Final Declaration of Disclosure (Form FL-141) or Stipulation and Waiver of Final Declaration of Disclosure (FL-144) signed by both parties.

[ ] Petitioner/Respondent shall serve this Order on the other party by mail within 7 days of today's date and file proof of service with the Court.

[ ] If your hearing exceeds one hour, be prepared to pay court reporter fees in the amount of $ _____ each on the day of the hearing, or else obtain a Fee Waiver Order at least 10 court days before the hearing.

[X] The Parties are Ordered to attend a Settlement Conference on 12/29/2025 at 8:30 ☒ AM ☐ PM in Department F.

[ ] Other _____

FAILURE TO COMPLY MAY RESULT IN MONETARY, EVIDENTIARY SANCTIONS, DENIAL OF ABILITY TO OFFER WITNESS TESTIMONY, EXHIBITS, AND/OR YOUR TRIAL BEING CONTINUED.

Dated: 9/19/2025

JUDGE SCOTT J. NORD

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
J.R. Howell, Esq. (268086)
2219 Main Street, Suite 436
Santa Monica, CA 90405
TELEPHONE NO.: (323) 897-8656 FAX NO. *(Optional)*: -----
EMAIL ADDRESS *(Optional)*: jr@lojrh.com
ATTORNEY FOR (*Name*): Plaintiff, Sofiya Goldshteyn

FOR COURT USE ONLY

Electronically FILED by Superior Court of California, County of Los Angeles 11/20/2025 8:00 AM David W. Slayton, Executive Officer/Clerk of Court, By J. Esplana, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: Same as above
CITY AND ZIP CODE: Los Angeles 90012
BRANCH NAME: Central District

PLAINTIFF/PETITIONER: Max Borenstein

DEFENDANT/RESPONDENT: Sofiya Goldshteyn

CASE NUMBER: 22STFL08826

JUDICIAL OFFICER: Scott Nord

DEPT:. 35

NOTICE OF RELATED CASE

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Goldshteyn v. Borenstein
   b. Case number: 25STCV33465
   c. Court: [x] same as above
      [ ] other state or federal court *(name and address):*
   d. Department: 16
   e. Case type: [ ] limited civil [x] unlimited civil [ ] probate [ ] family law [ ] other (*specify):*
   f. Filing date: 11/18/2025
   g. Has this case been designated or determined as "complex?" [ ] Yes [x] No
   h. Relationship of this case to the case referenced above *(check all that apply):*
      [x] involves the same parties and is based on the same or similar claims.
      [x] arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
      [ ] involves claims against, title to, possession of, or damages to the same property.
      [x] is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
      [x] Additional explanation is attached in attachment 1h
   i. Status of case:
      [x] pending
      [ ] dismissed [ ] with [ ] without prejudice
      [ ] disposed of by judgment

2. a. Title:
   b. Case number:
   c. Court: [ ] same as above
      [ ] other state or federal court *(name and address):*
   d. Department:

Form Approved for Optional Use
Judicial Council of California
CM-015 [Rev. July 1, 2007]

Cal. Rules of Court, rule 3.300
www.courts.ca.gov

PLAINTIFF/PETITIONER: Borenstein DEFENDANT/RESPONDENT: Goldshteyn	CASE NUMBER: 22STFL08826

2. *(continued)*

   e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (*specify):*

   f. Filing date:

   g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

   h. Relationship of this case to the case referenced above *(check all that apply):*

   ☐ involves the same parties and is based on the same or similar claims.

   ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

   ☐ involves claims against, title to, possession of, or damages to the same property.

   ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

   ☐ Additional explanation is attached in attachment 2h

   i. Status of case:

   ☐ pending

   ☐ dismissed ☐ with ☐ without prejudice

   ☐ disposed of by judgment

3. a. Title:

   b. Case number:

   c. Court: ☐ same as above

   ☐ other state or federal court *(name and address):*

   d. Department:

   e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (*specify):*

   f. Filing date:

   g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

   h. Relationship of this case to the case referenced above *(check all that apply):*

   ☐ involves the same parties and is based on the same or similar claims.

   ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

   ☐ involves claims against, title to, possession of, or damages to the same property.

   ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

   ☐ Additional explanation is attached in attachment 3h

   i. Status of case:

   ☐ pending

   ☐ dismissed ☐ with ☐ without prejudice

   ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: November 20, 2025

J.R. Howell (SBN 268086)
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: Borenstein DEFENDANT/RESPONDENT: Goldshteyn	CASE NUMBER: 22STFL08826

PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF RELATED CASE

(NOTE: You cannot serve the* Notice of Related Case *if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one):*
   a. ☐ deposited the sealed envelope with the United States Postal Service.
   b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:
   a. on *(date):*
   b. from *(city and state):*

4. The envelope was addressed and mailed as follows:

   a. Name of person served:
      Street address:
      City:
      State and zip code:

   b. Name of person served:
      Street address:
      City:
      State and zip code:

   c. Name of person served:
      Street address:
      City:
      State and zip code:

   d. Name of person served:
      Street address:
      City:
      State and zip code:

☐ Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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

Date: _____

_____ (TYPE OR PRINT NAME OF DECLARANT)

_____ (SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

ATTACHMENT 1H

As set forth below, Plaintiff, Sofiya Goldshteyn, respectfully requests that the Court relate the cases numbered 22STFL08826 and 25STCV33465:

Respondent Sofiya is the plaintiff in the matter currently pending in the Superior Court for this County, also in this district, captioned as *Goldshteyn v. Borenstein*, Case No. 25STCV33465. That matter has raised a number of legal claims that overlap Respondent Sofiya's claims for equitable remedies asserted in this family law matter, 22STSFL08826. In the civil action, Plaintiff Sofiya has invoked her right to a jury trial guaranteed by the California constitution.

There, Plaintiff's asserted legal claims include fraud-based damages, conversion, and Penal Code § 496(c) civil remedies, arising from the same nucleus of facts at issue in this case—namely, the parties' financial conduct, handling of a joint business, financial malfeasance, and management of assets.

If the matters proceed before different departments, one court's findings on overlapping factual or legal questions could inadvertently pre-adjudicate or invade issues reserved for the jury in the other action, risking inconsistent results and impairing Sofiya's constitutional jury right.

Relating the cases and managing them before a single department will conserve judicial resources, avoid duplication of discovery and motion practice, and permit proper sequencing to both streamline the judicial process and to protect Sofiya's constitutional right to have her legal remedies tried by a jury.

Specifically, the court can phase the civil action's jury-triable issues to be tried first on any common questions of fact, and then conduct the family-law bench determinations and equitable remedies in a manner consistent with the jury's findings. This approach eliminates the risk of conflicting determinations, streamlines evidentiary management, and ensures efficient, coordinated resolution of disputes arising from the same transactions and events.

Accordingly, the cases should be ordered related and assigned to the same department for coordinated case management, phased trial sequencing, and consistent adjudication.

LAW OFFICE OF J.R.HOWELL

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
J.R. Howell, Esq. (268086)
2219 Main Street, Suite 436
Santa Monica, CA 90405
TELEPHONE NO.: (323) 897-8656 FAX NO. *(Optional)*: -----
EMAIL ADDRESS *(Optional)*: jr@lojrh.com
ATTORNEY FOR (*Name*): Plaintiff, Sofiya Goldshteyn

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles
STREET ADDRESS: 111 N. Hill Street
MAILING ADDRESS: Same as above
CITY AND ZIP CODE: Los Angeles 90012
BRANCH NAME: Central District

PLAINTIFF/PETITIONER: Max Borenstein

DEFENDANT/RESPONDENT: Sofiya Goldshteyn

CASE NUMBER: 22STFL08826

JUDICIAL OFFICER: Scott Nord

DEPT:. 35

NOTICE OF RELATED CASE

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: Goldshteyn v. Borenstein
   b. Case number: 25STCV33465
   c. Court: [✖] same as above
      [ ] other state or federal court *(name and address):*
   d. Department: 16
   e. Case type: [ ] limited civil [✖] unlimited civil [ ] probate [ ] family law [ ] other (*specify):*
   f. Filing date: 11/18/2025
   g. Has this case been designated or determined as "complex?" [ ] Yes [✖] No
   h. Relationship of this case to the case referenced above *(check all that apply):*
      [✖] involves the same parties and is based on the same or similar claims.
      [✖] arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
      [ ] involves claims against, title to, possession of, or damages to the same property.
      [✖] is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
      [✖] Additional explanation is attached in attachment 1h
   i. Status of case:
      [✖] pending
      [ ] dismissed [ ] with [ ] without prejudice
      [ ] disposed of by judgment
2. a. Title:
   b. Case number:
   c. Court: [ ] same as above
      [ ] other state or federal court *(name and address):*
   d. Department:

Form Approved for Optional Use
Judicial Council of California
CM-015 [Rev. July 1, 2007]

Cal. Rules of Court, rule 3.300
www.courts.ca.gov

PLAINTIFF/PETITIONER: Borenstein DEFENDANT/RESPONDENT: Goldshteyn	CASE NUMBER: 22STFL08826

2. *(continued)*

   e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (*specify):*

   f. Filing date:

   g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

   h. Relationship of this case to the case referenced above *(check all that apply):*

   ☐ involves the same parties and is based on the same or similar claims.

   ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

   ☐ involves claims against, title to, possession of, or damages to the same property.

   ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

   ☐ Additional explanation is attached in attachment 2h

   i. Status of case:

   ☐ pending

   ☐ dismissed ☐ with ☐ without prejudice

   ☐ disposed of by judgment

3. a. Title:

   b. Case number:

   c. Court: ☐ same as above

   ☐ other state or federal court *(name and address):*

   d. Department:

   e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (*specify):*

   f. Filing date:

   g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

   h. Relationship of this case to the case referenced above *(check all that apply):*

   ☐ involves the same parties and is based on the same or similar claims.

   ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.

   ☐ involves claims against, title to, possession of, or damages to the same property.

   ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.

   ☐ Additional explanation is attached in attachment 3h

   i. Status of case:

   ☐ pending

   ☐ dismissed ☐ with ☐ without prejudice

   ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: _____

Date: November 20, 2025

J.R. Howell (SBN 268086)
(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: Borenstein DEFENDANT/RESPONDENT: Goldshteyn	CASE NUMBER: 22STFL08826

PROOF OF SERVICE BY FIRST-CLASS MAIL

NOTICE OF RELATED CASE

(NOTE: You cannot serve the* Notice of Related Case *if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)

1. I am at least 18 years old and **not a party to this action.** I am a resident of or employed in the county where the mailing took place, and my residence or business address is *(specify):*

   11 N. Washington Street, #630, Rockville, MD 20850

2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and *(check one):*

   a. [ ] deposited the sealed envelope with the United States Postal Service.

   b. [X] placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

3. The *Notice of Related Case* was mailed:

   a. on *(date):* 12/10/2025

   b. from *(city and state):* Rockville, MD

4. The envelope was addressed and mailed as follows:

   a. Name of person served: Max Borenstein
   Street address: 3778 Stewart Avenue
   City: Los Angeles, CA 90066
   State and zip code:

   b. Name of person served: Garry M. Gekht, Esq.
   Street address: Kaplan, Trope, Gekht & DeCarolis, LLP
   City: 10866 Wilshire Blvd., Suite 1650
   State and zip code: Los Angeles, CA 90024

   c. Name of person served:
   Street address:
   City:
   State and zip code:

   d. Name of person served:
   Street address:
   City:
   State and zip code:

[ ] Names and addresses of additional persons served are attached. *(You may use form POS-030(P).)*

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

Date: 12/10/2025

Charlene G. Shapiro
(TYPE OR PRINT NAME OF DECLARANT)

Charlene G. Shapiro
(SIGNATURE OF DECLARANT)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

Print this form | Save this form | Clear this form

ATTACHMENT 1H

As set forth below, Plaintiff, Sofiya Goldshteyn, respectfully requests that the Court relate the cases numbered 22STFL08826 and 25STCV33465:

Respondent Sofiya is the plaintiff in the matter currently pending in the Superior Court for this County, also in this district, captioned as *Goldshteyn v. Borenstein*, Case No. 25STCV33465. That matter has raised a number of legal claims that overlap Respondent Sofiya's claims for equitable remedies asserted in this family law matter, 22STSFL08826. In the civil action, Plaintiff Sofiya has invoked her right to a jury trial guaranteed by the California constitution.

There, Plaintiff's asserted legal claims include fraud-based damages, conversion, and Penal Code § 496(c) civil remedies, arising from the same nucleus of facts at issue in this case—namely, the parties' financial conduct, handling of a joint business, financial malfeasance, and management of assets.

If the matters proceed before different departments, one court's findings on overlapping factual or legal questions could inadvertently pre-adjudicate or invade issues reserved for the jury in the other action, risking inconsistent results and impairing Sofiya's constitutional jury right.

Relating the cases and managing them before a single department will conserve judicial resources, avoid duplication of discovery and motion practice, and permit proper sequencing to both streamline the judicial process and to protect Sofiya's constitutional right to have her legal remedies tried by a jury.

Specifically, the court can phase the civil action's jury-triable issues to be tried first on any common questions of fact, and then conduct the family-law bench determinations and equitable remedies in a manner consistent with the jury's findings. This approach eliminates the risk of conflicting determinations, streamlines evidentiary management, and ensures efficient, coordinated resolution of disputes arising from the same transactions and events.

Accordingly, the cases should be ordered related and assigned to the same department for coordinated case management, phased trial sequencing, and consistent adjudication.

LAW OFFICE OF J.R.HOWELL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Santa Monica Dept. - F

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

December 29, 2025
8:30 AM

Honorable Joshua D. Wayser, Judge

E. Pelke, Judicial Assistant | Not Reported, Court Reporter

NATURE OF PROCEEDINGS: Mandatory Settlement Conference

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Sofiya Alexandra Goldshteyn, Respondent
Garry Mark Gekht, Attorney for Petitioner
Carly Joanne Timm-Bijold, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
Jason P. Koch, Associated Attorney for Respondent

The matter is not called for hearing.

A confidential settlement conference is conducted off the record.

The parties reach settlement on the matter with the exception of the outstanding issue regarding the embryo.

The Court sets the case for Non-Appearance Case Review re: Receipt of Deal Memo on **December 31, 2025 at 8:30 AM in Department F.**

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Santa Monica Dept. - F

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

December 31, 2025
8:30 AM

Honorable Joshua D. Wayser, Judge

E. Pelke, Judicial Assistant | Not Reported, Court Reporter

NATURE OF PROCEEDINGS: Non-Appearance Case Review re: Receipt of Deal Memo

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Carly Joanne Timm-Bijold, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent
All appearances are via LA Court Connect.

Out of the presence of the Court Reporter, The matter is not called for hearing.

After speaking with the Court, the parties are executing the Deal Memo.

Counsel will advise if they wish to file the Deal Memo.

By their agreement and with the consent of the home court judge, the Court vacates all trial dates with the exception of the one scheduled on February 24, 2026.

The Court advances to this date and vacates the 02/25/2026 Trial.
The Court advances to this date and vacates the 02/26/2026 Trial.
The Court advances to this date and vacates the 02/27/2026 Trial.
The Court advances to this date and vacates the 03/03/2026 Trial.
The Court advances to this date and vacates the 03/04/2026 Trial.
The Court advances to this date and vacates the 03/05/2026 Trial.
The Court advances to this date and vacates the 03/06/2026 Trial.

The Court sets the case for Order to Show Cause re: Entry of Judgment on **April 2, 2026 at 8:30 AM in Department F.**

Clerk is to give notice via email.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Family Division

Stanley Mosk Dept. - 35, Stanley Mosk Dept. - 35,

22STFL08826
Borenstein, Max David
vs
Goldshteyn, Sofiya Alexandra

January 8, 2026
8:30 AM

Honorable Scott J. Nord, Judge

J. Limon, Judicial Assistant

Ronald Kim (#12299), Court Reporter

NATURE OF PROCEEDINGS: RFO/MTN - Bifurcation filed by Petitioner on October 15, 2025

The following parties are present for the aforementioned proceeding:

Max David Borenstein, Petitioner
Garry Mark Gekht, Attorney for Petitioner
Jimmy Ray Howell, Attorney for Respondent

The matter is called for hearing. All appearances made via LA Court Connect.

The Petitioner is affirmed.

The Court and counsel confer as to the status of the case.

The Court finds good cause to grant this Request for Order.

Motion for bifurcation is granted..

Notice is waived.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 1

25STCV33465 January 9, 2026
SOFIYA GOLDSHTEYN vs MAX BORENSTEIN 8:30 AM

Judge: Honorable Lawrence P. Riff CSR: None
Judicial Assistant: Cecilia Guerrero ERM: None
Courtroom Assistant: Rosalie M. Cruz Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Court Order Re Notice of Related Case Re Goldshteyn v. Borenstein (25STCV33465); In re: Marriage of Borenstein and Goldshteyn (22STFL08826)

On November 20, 2025, Plaintiff/Respondent Sofiya Goldshteyn filed a Notice of Related Case involving civil law case 25STCV33465 *Goldshteyn v. Borenstein* and family law case 22STFL08826 *In re: Marriage of Borenstein and Goldshteyn*. On December 8, 2025, Department 1 issued an order noting Goldshteyn failed to properly demonstrate service of the Notice.

On December 10, 2025, Goldshteyn filed a new Notice of Related Case involving 25STCV33465 and 22STFL08826 with a proof of service.

Pursuant to Los Angeles Superior Court Local Rule 3.3(f)(2), "[w]here the cases listed in a Notice of Related Cases contains a probate or family law case, Department 1 shall determine whether the cases shall be ordered related and, if so, to which department they shall be assigned if the cases are all pending in the Central District or pending in two different districts. If the cases are all pending in one district that is other than the Central District, the Supervising Judge of that district shall determine whether the cases shall be ordered related and, if so, to which department they shall be assigned. In addition to filing the Notice of Related Cases in the departments of all pending cases, a copy of the Notice of Related Cases must be filed in Department 1 for matters to be determined in Department 1." Department 1 received a copy of the Notice for consideration on December 23, 2025.

The Court did not receive a timely response to the Notice. (Cal. R. Ct., rule 3.300(g).)

In order of filing, the relevant cases listed in the Notice are:

- ***In re: Marriage of Borenstein and Goldshteyn* (22STFL08826)** – filed on August

11, 2022 when Max Borenstein petitioned the court for dissolution of marriage naming Sofiya Goldshteyn as the respondent. The petition indicated the parties married on December 31, 2014 and separated on April 6, 2022. Respondent filed a response on October 14, 2022 stating the date of separation was August 23, 2022.

On August 19, 2024, Respondent filed a request for order alleging Petitioner cutoff access to community funds, including tax refunds, and arguing the court should issue an order of support to remedy Petitioner's breach of the parties' written support agreement.

On December 29, 2025, the court entered an order stating "[t]he parties reach settlement on the matter with the exception of the outstanding issue regarding the embryo."

The family law action is currently pending in Department 35 of the Stanley Mosk Courthouse with a single remaining trial date set for February 24, 2026.

· ***Goldshteyn v. Borenstein* (25STCV33465)** – filed on November 17, 2025 when Sofiya Goldshteyn sued Max Borenstein asserting claims for: (1) declaratory judgment; (2) breach of fiduciary duty; (3) violations of Penal Code § 496; (4) conversion; (5) fraudulent inducement; (6) fraudulent concealment; (7) fraud (Cal. Civ. Code §§ 1709-12); (8) constructive fraud; (9) negligent misrepresentation; and (10) breach of contract. The complaint alleges "[d]uring their marriage, the couple established a family trust, a real estate holding company, and numerous financial accounts and investments, worth millions of dollars. Before informing Goldshteyn of his intent to file for divorce, he covertly syphoned substantial sums of money out of their accounts, including the trust account managed by Borenstein for the benefit of Goldshteyn." (Compl. ¶ 1.) Defendant allegedly secreted rental income, stole Plaintiff's share of tax returns, and breached a support agreement whereby Defendant agreed to pay for Plaintiff's support during the dissolution process. The complaint further alleges Defendant withheld "undisputed community cash flows." (Compl. ¶ 144.)

The civil law action is currently pending in Department 16 of the Stanley Mosk Courthouse with the case management conference set for February 23, 2026.

As seen above, the cases involve the same parties, but are not based upon same or substantially similar claims. (Cal. R. Ct., rule 3.300(a)(1).) However, the cases arise from arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact. (Cal. R. Ct., rule 3.300(a)(2).) The dissolution action arises out of the parties' desire to dissolve their marriage and divide their

assets and the civil case alleges the improper disposition of alleged community assets. The cases also involve title to and possession of to the same property allegedly shared by the parties during their marriage. (Cal. R. Ct., rule 3.300(a)(3).) The family law court has exclusive jurisdiction to adjudicate the dissolution of the couple's marriage by characterizing property as being separate or community, confirming separate property to a particular spouse, dividing the community and quasi-community property. (See *In re Marriage of Hebbring* (1989) 207 Cal. App. 3d 1260, 1275. See also *Dale v. Dale* (1998) 66 Cal.App.4th 1172, 1183 ("[W]hen a dissolution proceeding is pending in the family court, another department of the superior court may not act so as to interfere with the family court's exercise of its powers in that proceeding.").) Given the relationship between the parties and conduct at issue, the cases are likely to require a substantial duplication of judicial resources if they continue to be heard by different judges. (Cal. R. Ct., rule 3.300(a)(4).) Having a single judicial officer preside over the entirety of the parties' dispute regarding their assets promotes judicial economy and reduces the potential for inconsistent rulings. The Court finds the cases are related within the meaning of California Rules of Court, rule 3.300.

Accordingly, Department 1 relates civil law case 25STCV33465 with family law case 22STFL08826 and orders the civil case reassigned to family law Department 35 of the Stanley Mosk Courthouse for all purposes. All hearings currently set in 25STCV33465 are hereby advanced and vacated.

Counsel for Sofiya Goldshteyn in 25STCV33465 to give notice to all parties in all cases listed in the Notice.

Certificate of Service is attached.

J.R. HOWELL (Cal. Bar No. 268086)
jr@lojrh.com
LAW OFFICE OF J.R. HOWELL
2219 Main Street
Suite 436
Santa Monica, CA 90405
(323) 897-8656
Attorney for Respondent

Electronically FILED by
Superior Court of California,
County of Los Angeles
2/13/2026 8:35 PM
David W. Slayton, Clerk of Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MAX BORENSTEIN, Petitioner, vs. SOFIYA GOLDSHTEYN, Respondent.	**Case No. 22STFL08826** Assigned for all purposes to the Hon. Scott Nord, Dept. 35 **PROOF OF SERVICE** **Dept: 35** **Trial Date: Feb. 24, 2026**

I, J.R. HOWELL, declare that I am an attorney licensed to practice law in the State of California, I am over the age of eighteen years and am not a party to this action. My business address is 2219 Main Street, Suite 436, Santa Monica, CA 90405, in Los Angeles County, California. On **February 13 2026**, I served the following document(s):

RESPONDENT'S TRIAL BRIEF
RESPONDENT'S EXHIBIT LIST
RESPONDENT'S WITNESS LIST

on the parties stated below, by the following means of service:

Garry Gekht, Esq.
Carly J. Timm-Bijold, Esq.
Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
mbore@ktg.law

() (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be

deposited with the United States Postal Service this same day in the ordinary course of business at the Firm's office address in Santa Monica, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(X) (BY ELECTRONIC SERVICE) by causing the foregoing document(s) to be electronically served using a court approved Electronic Service Provider which constitutes service of the filed document(s) on the individual(s) listed on the service list.

() (BY E-MAIL SERVICE) I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the below service list.

() (BY OVERNIGHT DELIVERY) I served the foregoing document by an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth in the attached service list, with fees for overnight delivery paid or provided for.

() (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the named addressee(s) in the attached service list.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Date: **February 13, 2026**

J.R. Howell (Cal. Bar No. 268086)

LAW OFFICE OF J.R.HOWELL

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jr@lojrh.com
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ANNE E. GROVER (*Pro Hac Vice*)
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Jason P. Koch (State Bar No. 325156)
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THE LAW OFFICE OF JASON P. KOCH
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101
Phone: (805) 695-4527
Fax: (805) 695-4528

ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S WITNESS LIST** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

RESPONDENT'S WITNESS LIST

Respondent intends to call the following witnesses to testify at trial:

NAME	SUBJECT AND BRIEF DESCTIPTION OF TESTIMONY	TIME
Sofiya Goldshteyn	Respondent who will testify as to the embryos at issue.	1 Hour
Max Borenstein	Petitioner who will testify as to the embryos at issue.	1 Hour
J.R. Howell	Counsel for Respondent who will testify as to attorney fees and sanctions.	15 Minutes

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: February 13, 2026

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent, Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

Garry M. Gekht, Esq. (SBN 321424)
Carly J. Timm-Bijold, Esq. (SBN 361335)
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Attorneys for Petitioner,
Max David Borenstein

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **PETITIONER'S WITNESS LIST** TRIAL: February 24, 2026 Dept. 35 (Hon. Scott J. Nord)

Pursuant to the Trial Orders entered on September 19, 2025, Petitioner Max David Borenstein hereby submits the following list of non-impeachment witnesses currently anticipated to be called by him at trial in the above-entitled proceeding.

KAPLAN, TROPE, GEKHT & DECAROLIS, LLP

DATED: 02/13/2026 BY: _____
Garry M. Gekht, Esq.
Attorneys for Petitioner,
Max David Borenstein

WITNESS	TESTIMONY	TIME EST.
Max David Borestein C/O Kaplan, Trope, Gekht & DeCarolis, LLP 10866 Wilshire Blvd., Suite 1650 Los Angeles, CA 90024	Mr. Borenstein is the Petitioner in this proceeding. He will testify regarding the remaining material issue—the disposition of cryopreserved embryos.	1 hour
Sofiya Alexandra Goldshteyn C/O Law Office of J.R. Howell 2219 Main Street, Suite 436 Santa Monica, CA 90405	Ms. Goldshteyn is the Respondent in this proceeding. She will testify regarding the remaining material issue—the disposition of cryopreserved embryos.	1.5 hours
Garry M. Gekht, Esq. Kaplan, Trope, Gekht & DeCarolis, LLP 10866 Wilshire Blvd., Suite 1650 Los Angeles, CA 90024	Mr. Gekht is Petitioner's attorney of record in this proceeding. He will testify regarding attorney's fees and sanctions.	20 minutes

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Los Angeles, CA 90024
(310) 473-0798

LAW OFFICES OF KAPLAN, TROPE & GEKHT
10866 Wilshire Boulevard, Suite 1650
Los Angeles, CA 90024
(310) 473-0798

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1650, Los Angeles, California 90024.

On February 13, 2026, I served the foregoing document described as: **PETITIONER'S WITNESS LIST** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows: ☒ by attaching a digital copy of the document to the email address provided as follows:

J.R. Howell, Esq.
Law Office of J.R. Howell
2219 Main Street, Suite 436
Santa Monica, CA 90405

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

Jason P. Koch, Esq.
The Law Office of Jason P. Koch
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

[ ] BY CAUSING TO BE PERSONALLY SERVED: I caused delivery of such envelope by hand to the offices of the addressee.

[ ] VIA OVERNIGHT DELIVERY: : I enclosed the documents in an envelope or package by an overnight delivery carrier and addressed to the person(s) at the address(es) above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier. The envelope or package was designated for next business day delivery, with all charges billed to sender.

[XX] BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the following electronic notification addresses: jr@lojrh.com; **agrover@gbfamilylawyers.com; jason@jasonkochlaw.com; rdavies@gbfamilylawyers.com.** I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 13, 2026, at Los Angeles, California.

Maria Morales
Maria Morales

Garry M. Gekht, Esq. (SBN 321424)
Carly J. Timm-Bijold, Esq. (SBN 361335)
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Attorneys for Petitioner,
Max David Borenstein

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 *[Assigned to Dept. 35, Hon. Scott J. Nord]* **PETITIONER'S TRIAL BRIEF** DATE: 02/24/2026 TIME: 8:30 AM DEPT: 35 (Hon. Scott J. Nord)

Pursuant to the Trial Orders entered on September 19, 2025, Petitioner Max David Borenstein ("Max")[1] submits the following brief in anticipation of trial between he and Respondent Sofiya Alexandra Goldshteyn ("Sofiya") in the above-entitled marital dissolution proceeding ("this proceeding").

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1. In accordance with appellate court practices, the Parties are referred to by their first names. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.) In doing so, no disrespect is intended.

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I. STATISTICAL INFORMATION

A. Petitioner: Max David Borenstein (DOB: 06/20/1981)

B. Respondent: Sofiya Alexandra Goldshteyn (DOB: 11/30/1982)

C. Date of Marriage: 12/31/2014

D. Date of Separation: 04/06/2022 (per Max)
08/23/2022 (per Sofiya)

E. Length of Marriage: 7 years, 3 months (per Max's date of separation)
7 years, 8 months (per Sofiya's date of separation)

F. Minor Children: None

II. PROCEDURAL INFORMATION

A. Petition Filed: 08/11/2022

B. Response Filed: 10/14/2022

C. Future Proceedings: 02/24/2026 – Trial
04/02/2026 – OSC re Entry of Judgment

D. Disputed Issues: Disposition of Cryopreserved Embryos

III. RELEVANT PRIOR ORDERS

A. Trial Order Entered September 19, 2025

At the Trial Setting Conference held on September 19, 2025, the Court set trial dates of February 24–27, 2026 and March 3–6, 2026, and ordered Counsel and the Parties to:

1. Be physically present at trial.
2. Serve and file current Income and Expense Declarations with last three paystubs, profit and loss statement, and last filed tax return (cross out social security numbers) no less than 10 days prior to Trial, and fully comply with Family Code section 3665, Los Angeles County Local Rule 5.9, and California Rules of Court rule 5.427(d)(1).
3. Bring Tax Returns to the Trial for 2023 and 2024 (or W2 and/or or 1099 statements for those years if no tax return was filed).

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4. Serve and File witness lists no less than 10 days prior to Trial, identifying area of testimony of each.

5. Serve and File exhibit lists no less than 10 days prior to Trial. Be specific. Petitioner's exhibits shall be listed numerically beginning with "1"; Respondent's exhibits shall be listed alphabetically, beginning with "A"; upon agreement of Counsel/Parties, exhibits may be numbered when identified and admitted. Bring to court three copies of each and every exhibit you plan to present at the trial. Individual exhibits exceeding five pages must be internally paginated.

6. Serve and File Trial Briefs no less than 10 days prior to Trial or Evidentiary Hearing. Not to exceed 10 pages.

7. Bring Proof of Service of Final Declaration of Disclosure (Form FL-141) or Stipulation and Waiver of Final Declaration of Disclosure (FL-144) signed by both parties.

8. Attend a Settlement Conference on December 29, 2025 at 8:30 AM in Department F.

B. <u>Minute Order Entered December 29, 2025</u>

At a confidential settlement conference conducted off the record, the Parties reached settlement on the matter with the exception of the outstanding issue regarding the embryo.

The Court set the case for Non-Appearance Case Review re: Receipt of Deal Memo on December 31, 2025 at 8:30 AM in Department F.

C. <u>Minute Order Entered December 31, 2025</u>

By the Parties' agreement and with the consent of the home court judge, the Court vacated all trial dates with the exception of the one scheduled on February 24, 2026.

The Court set the case for Order to Show Cause re: Entry of Judgment on April 2, 2026 at 8:30 AM in Department F.

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IV. DISPOSITION OF CRYOPRESERVED EMBRYOS

A. Background

Between July 2021 and February 2022, the Parties participated in two cycles of in-vitro fertilization ("IVF") at the Southern California Center for Reproductive Medicine ("SCCRM"). These cycles resulted in a total of 20 embryos—one embryo from the 2021 cycle, which is the product of Max's sperm and Sofiya's egg, and 19 embryos from the 2022 cycle, which are the products of Max's sperm and donor eggs—(collectively, "the Embryos"). The Embryos are currently held in cryopreservation storage by Ovation Fertility Storage Solutions ("Ovation"), SCCRM's laboratory affiliate.

Max and Sofiya executed three documents that included disposition plans for the embryos in the event of their divorce or legal separation:

1. On July 10, 2021, the Parties signed SCCRM's Assisted Reproductive Technology ("ART") Informed Consent form ("ART Consent"). As shown therein, Max and Sofiya agreed that, in the event of divorce, dissolution, or legal separation, all of their cryopreserved embryos in storage were to be donated to medical research. **(Exhibit 1, Bates Page 000009)**
2. On February 8, 2022, the Parties signed SCCRM's Assisted Reproductive Technology ("ART") Informed Consent form ("ART Consent"). As shown therein, Max and Sofiya agreed that, in the event of divorce, dissolution, or legal separation, all of their cryopreserved embryos in storage were to be transferred to Max. **(Exhibit 3, Bates Page 000009)**
3. On February 8, 2022, the Parties signed Ovation's Storage Consent form. As shown therein, Max and Sofiya agreed that, in the event of their divorce or separation, any of their cryopreserved embryos stored at Ovation were to be discarded. **(Exhibit 4, Bates Page 000006)**

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A dispute has arisen between the Parties regarding the disposition of the Embryos. While Max would like the Embryos discarded in accordance with the February 2022 Storage Consent, Sofiya now wishes to have ownership of the Embryos transferred to her, so that she can bring "at least one" to term as soon as possible.

B. <u>Legal Argument</u>

The choices available to couples regarding to the disposition of embryos created through ART are codified under section 125315 of the Health and Safety Code, which provides, in relevant part:

> "(a) A physician and surgeon or other health care provider delivering fertility treatment shall provide his or her patient with timely, relevant, and appropriate information to allow the individual to make an informed and voluntary choice regarding the disposition of any human embryos remaining following the fertility treatment.
>
> […]
>
> "(b) Any individual to whom information is provided pursuant to subdivision (a) shall be presented with the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research. When providing fertility treatment, a physician and surgeon or other health care provider shall provide a form to the male and female partner, or the individual without a partner, as applicable, that sets forth advanced written directives regarding the disposition of embryos. This form shall indicate the time limit on storage of the embryos at the clinic or storage facility and shall provide, at a minimum, the following choices for disposition of the embryos based on the following circumstances:
>
> […]
>
> (3) In the event of separation or divorce of the partners, the embryos shall be disposed of by one of the following actions:
>
> (A) Made available to the female partner.
>
> (B) Made available to the male partner.
>
> (C) Donation for research purposes.

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(D) Thawed with no further action taken.

(E) Donation to another couple or individual.

(F) Other disposition that is clearly stated."

Less than two months ago, California's appellate courts took up for the first time the application of section 125315 in the context of divorce in their opinion in *Pham v. Superior Court of Orange County* (2025) 117 Cal.App.5th 115 ("*Pham*"). In *Pham*, a husband and wife signed an IVF consent agreement that complied with the requirements of section 125315, wherein they agreed that any embryos that remained in cryopreservation if and when they ever chose to divorce would be "[m]ade available to the partner if he/she wishes". However, in the course of their dissolution proceeding, Husband attempted to prevent Wife from exercising her contractual prerogative to use the embryos and later appealed the trial court's decision to award them to her.

In rejecting Husband's attempt to deviate from the terms of the parties' contract, the *Pham* court held that the trial court had correctly determined that the IVF contract was valid and unambiguous. There, as here, there was no evidence presented by the party seeking to deviate from the terms of the contract—there, Husband, here, Sofiya—of any ambiguity therein and the parties selected their chosen option in lieu of other alternatives provided in the contract, such as destruction or donation. Sofiya has proffered no evidence that any of the Parties' embryo-related contracts are invalid or vague, and she would be hard-pressed to do so, in light of the fact that, like the parties in *Pham*, she and Max explicitly chose the options of donating the embryos to medical research, transferring them to Max, and/or destroying them, despite all three contracts clearly offering the alternative of transferring them to her.

The contract being valid and unambiguous, the *Pham* court held that the so-called "contractual approach"—in which the court enforces the parties' agreement—should govern the embryos' disposition:

> "The contractual approach "'minimize[s] misunderstandings and maximize[s] procreative liberty by reserving to the progenitors the

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> authority to make what is in the first instance a quintessentially personal, private decision.'" (*Rooks*, *supra*, 429 P.3d at p. 592.) There are also "significant benefits to making this decision in advance, rather than at the moment of disposition. Preexisting agreements 'promote serious discussions between the parties prior to participating in in vitro fertilization'; [citation]; and manifest choices 'made before disputes erupt' [Citation.] This 'minimize[s] misunderstandings' that might arise in the future, provides certainty for progenitors and fertility clinics, and decreases the likelihood of litigation." (*Bilbao*, *supra*, 217 A.3d at p. 986.)
>
> Moreover, the contractual approach is consistent with California's articulated public policy. California law requires a health care provider that is providing fertility treatments to give "a form to the male and female partner, or the individual without a partner, as applicable, that sets forth advanced written directives regarding the disposition of embryos," including certain choices in the event the partners separate or divorce. (Health & Saf. Code, § 125315, subd. (b).) Even if that statute is not dispositive of the issue here, it strongly supports the contractual approach.
>
> […]
>
> As discussed above, Health and Safety Code section 125315, subdivision (b) supports a conclusion that California public policy favors the contractual approach. In the face of a legislative requirement that IVF providers give their patients forms to specify in advance how frozen embryos would be treated in the event of separation or divorce, it would be nonsensical for us to conclude it would be contrary to the policy of this state to enforce the parties' resulting advance directives. Here, [Husband] acknowledged in writing that he "freely consent[ed] to undergo an IVF procedure to attempt to obtain a pregnancy" and agreed the resulting frozen embryos would be made available to [Wife], if she wished, in the event of divorce or legal separation. We find no policy in California that is antithetical to the enforcement of such an agreement."
>
> (*Pham*, *supra*, 117 Cal.App.5th at pp. 212–213.)

The only authorities offered by Sofiya in support of her drastic change in position are Article 1, section 1.1 of the California Constitution (which provides that "the state shall not deny or interfere with an individual's reproductive freedom"), and Section 123462 of the California Health and Safety Code (which provides that "every pregnant individual or individual who may

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become pregnant has the fundamental right to choose to bear a child […] the state shall not deny or interfere with the fundamental right of a pregnant individual or an individual who may become pregnant to choose to bear a child"). Both these statutory invocations are red herrings, as freedom from state interference does not equal freedom from private contractual obligations.

Finally, Sofiya's proposed course of action would force Max—the only Party whose DNA is part of all the embryos—to father a child against his will, an outcome specifically criminalized under the Penal Code[2] and denounced by California's courts[3].

In light of the foregoing, the only rulings that comport with California statutory authority, decisional authority, and public policy are awarding the Embryos to Max or ordering their destruction. Given that the former would result in the latter, Max respectfully requests that, for purposes of expediently resolving this fraught and long-contested issue, the Court order the Embryos destroyed.

Respectfully Submitted: KAPLAN, TROPE, GEKHT & DECAROLIS, LLP

DATED: 02/13/2026 BY: _____

Garry M. Gekht, Esq.
Attorneys for Petitioner,
Max David Borenstein

2. "It shall be unlawful for anyone to knowingly use sperm, ova, or embryos in assisted reproduction technology, for any purpose other than that indicated by the sperm, ova, or embryo provider's signature on a written consent form." (Pen. Code, § 367g, subd. (a).)

3. "[Husband's] right not to be compelled to be a parent with [Wife] outweighs [Wife's] right to have a biologically related child". (*Findley v. Lee* (2016 WL 270083), p. 39.)

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1650, Los Angeles, California 90024.

On February 13, 2026, I served the foregoing document described as: **PETITIONER'S TRIAL BRIEF** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows: ☒ by attaching a digital copy of the document to the email address provided as follows:

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Santa Monica, CA 90405

Anne E. Grover, Esq.
Grover & Badalian
11 N. Washington St., Suite 630
Rockville, MD 20850

Jason P. Koch, Esq.
The Law Office of Jason P. Koch
3 West Carrillo Street, Suite 216
Santa Barbara, California 93101

[ ] BY MAIL: I deposited such envelope(s) with the United States Postal Service at Los Angeles, California with the postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 13, 2026, at Los Angeles, California.

Maria Morales
Maria Morales

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Marriage of: MAX DAVID BORENSTEIN Petitioner and SOFIYA ALEXANDRA GOLDSHTEYN Respondent.	Case No. 22STFL08826 **PETITIONER'S EXHIBIT LIST** TRIAL: February 24, 2026 Dept. 35 (Hon. Scott J. Nord)

Pursuant to the Trial Orders entered on September 19, 2025, Petitioner Max David Borenstein hereby submits the following list of non-impeachment exhibits to be offered by him at trial in the above-entitled proceeding.

KAPLAN, TROPE, GEKHT & DECAROLIS, LLP

DATED: 02/13/2026 BY: _____
Garry M. Gekht, Esq.
Attorneys for Petitioner,
Max David Borenstein

#	DATE	DESCRIPTION	MARKED	ADMITTED
1	07/10/2021	Southern California Center for Reproductive Medication Assisted Reproductive Technology Informed Consent		
2	12/20/2021	Letter from Vorzimer Masserman Fertility & Family Law Center		
3	02/08/2022	Ovation Fertility Storage Solutions Reproductive Materials Cryopreservation & Storage Agreement		
4	02/08/2022	Southern California Center for Reproductive Medication Assisted Reproductive Technology Informed Consent		
5	06/17/2025	Deposition Transcript of Respondent with Exhibits		
6	10/15/2023 – 01/15/2026	Invoices issued by Kaplan, Trope, Gekht & DeCarolis, LLP to Petitioner* **To be updated to reflect any additional invoices issued between 2/13/26 and time of trial.*		

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 10866 Wilshire Boulevard, Suite 1650, Los Angeles, California 90024.

On February 13, 2026, I served the foregoing document described as: **PETITIONER'S EXHIBIT LIST** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelopes addressed as follows: ☒ by attaching a digital copy of the document to the email address provided as follows:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 13, 2026, at Los Angeles, California.

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Maria Morales

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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S TRIAL BRIEF** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

INTRODUCTION

This case asks whether the State may, at one spouse's request, extinguish the other spouse's last realistic chance at genetic motherhood by ordering destruction of cryopreserved embryos or placing them beyond her control. The embryos exist because both parties chose to create them during marriage as part of a shared agreement to procreate, after years of cancer and fertility treatments. Sofiya cannot simply try again through conventional means: her medical history, her fight against cancer, and the realities of infertility treatment make time and biology unforgiving. The embryos at issue are the only remaining path to a biologically related child. The relief Sofiya requests does not subject Max to any invasion of his bodily autonomy, no request to undergo any medical procedure, to provide genetic material, or to do anything with his body against his will. By contrast, his requested relief is a veto that would operate only through state power against Sofiya's constitutional rights to reproductive autonomy. California law now recognizes and protects the precise interest at stake here: a fundamental right, held by an individual who may become pregnant, to choose to bear a child, expressly including infertility care, free from state interference.

In support of his request, he argues that this is a contract matter and asserts in his Trial Brief various forms containing what he identifies as conflicting disposition directives, signed over various years. To date, Petitioner has never produced copies of these documents to Respondent, despite years of litigation.

Because embryo destruction, or an order functionally preventing their use through transfer or delay, is state action that permanently forecloses Sofiya's fundamental rights and imposes an unconstitutional spousal veto, the Court should award Sofiya exclusive control of the embryos and craft any necessary protective orders to address parentage and support through the least restrictive means available, including through recently enacted Family Code § 7613(e).

I. Requested Relief.

Pursuant to this Trial Brief, Sofiya requests that the Court issue an order granting her exclusive control over and use of the unimplanted embryos the parties created during marriage.

II. Statistical Information and Background Facts.

A. *Statistical Information*. The Parties were married on December 31, 2014, and separated at some point in 2022. Max's Petition for Dissolution (*in pro per*) was filed with the Court on August 11, 2022, although it wasn't served on Sofiya until September 26, 2022. Sofiya's response was timely filed on October 14, 2022. Pursuant to a mediation held on December 29, 2025, in Department F, the parties reached a preliminary agreement to resolve their dissolution. The only remaining issue for trial is the disposition of unimplanted embryos.

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B. *Background Facts*. Sofiya is 43 years old. She is a writer and comedian. Sofiya was born in Odessa, Ukraine and raised by her mother, Klavdia.

When she was a child, she emigrated to the United States and came of age in Los Angeles, where she went to high school with her husband, Max Borenstein. She attended George Washington University where she studied literature, was actively involved in theater, and engaged in community service activities in the Washington D.C. area.

After college, Sofiya returned to Los Angeles in 2001 where she began to explore her career as a writer and comedian. It was during this time that she and Max began the relationship that would culminate in their marriage in 2014.

In 2016, in the middle of her most successful career year where she wrote on her first TV show, *Danger & Eggs*, and taped her first TV appearance for Comedy Central, Sofiya was diagnosed with breast cancer. She was only 33. She underwent all of the steps of the diagnosis and the lumpectomy and lymph node biopsy while performing at 8 comedy festivals all over the country. She also performed through a year of chemotherapy and a month of radiation. Although her cancer has not returned, her current good health is the result of a long-fought battle and constant monitoring—she has to see her oncologist every 3 months for an exam, bloodwork, and an intramuscular injection of Lupron plus a combination of mammograms and scans. Because her cancer is positive for progesterone and estrogen, Sofiya has been put on oral and injected medications that shut down the production of those hormones and puts her into menopause. She's been in menopause since she was 33, she's 43 now. Her treatment is ongoing.

For Sofiya, the act of surviving cancer—the suffering, the uncertainty, the perseverance, the scars—transformed not just her body, but also her soul. This impacts her view of the potential life embodied in the embryos at issue.

During her battle with cancer (specifically, on the day of the diagnosis) Sofiya had to decide if she wanted to do an egg retrieval to preserve her opportunity to have children since chemotherapy has a detrimental impact on the reproductive system. As a result, she started fertility shots that day. Max had always wanted children and, when faced with cancer, Sofiya decided that she did too. Over the next 6 years, Sofiya underwent 3 egg retrievals total.

By the Spring of 2022, the IVF and surrogacy process had resulted in three deeply painful miscarriages through three different surrogates, two of which were at the end of the first trimester. Sofiya wrote the profile and letter for the surrogacy website and was also the one that kept in touch with all three women throughout the process and after. Max continued to bury himself in work, and the emotional distance that began during cancer increased through the surrogacy process. Sofiya

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grieved alone.

Throughout 2022, their marriage deteriorated to the point of dissolution. While some of the embryos in cryostorage were created from donor eggs and Max's sperm, some were also created from Sofiya's eggs and Max's sperm. Only one of the embryos at issue was made from Sofiya's eggs and it is the last egg her body is capable of creating. While Max wants this embryo destroyed, it is Sofiya's last chance of genetic motherhood.

Legal Argument

Three principles resolve the embryo-disposition dispute. First, California has constitutionalized reproductive autonomy and expressly commands that the State shall not deny or interfere with Sofiya's fundamental choice to bear a child, including through infertility care. The U.S. Constitution grants a similar freedom from such interference.

Second, any order destroying the embryos or placing them beyond Sofiya's use is state interference that permanently forecloses those fundamental rights and therefore triggers strict scrutiny under the U.S. Constitution and the imposition of California's compelling interest standard: Max's request is presumptively unconstitutional and he bears the heavy burden of identifying a compelling interest and how his requested order is narrowly tailored to the least restrictive means of furthering that interest. He cannot do so here where nothing is being compelled of him or his bodily autonomy and where narrower, rights-respecting alternatives exist.

Third, a judicially enforced spousal veto is an equal-protection and due process violation because it empowers one spouse to block the other spouse's sex-linked reproductive choice. The Court should therefore award Sofiya exclusive control and disposition of the embryos and, if necessary, implement Family Code § 7613(e) as the least restrictive means to address any asserted downstream concerns about legal parentage or support, rather than ordering the most extreme remedy of destruction or delay.[1]

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[1] Petitioner asserts in his Trial Brief that various undisclosed documents trump Sofiya's constitutional rights. His Exhibit List identifies four documents that his Trial Brief characterizes as conflicting embryo "disposition directives." None of these documents were produced to Respondent, despite Respondent's discovery demands, despite the parties' statutory disclosure obligations, and despite this Court's August 6, 2025 Order granting Respondent's Motion to Compel Compliance and directing Petitioner to produce categories of documents that necessarily include any purported embryo disposition directive. Unless and until Petitioner lays competent foundational proof that (1) each document is a valid and enforceable interspousal agreement, (2) it applies to the specific embryos at issue, and (3) it supersedes any earlier directive it contradicts, the Court should exclude the documents in their entirety, or, at minimum, sharply limit any use of them. Respondent therefore requests appropriate evidentiary, issue, and monetary sanctions, including exclusion of these unproduced documents.

In any event, Petitioner's asserted statutory/contractual theories do not supply the narrowly tailored compelling interest that would be required to justify an order destroying the embryos or delaying Respondent's ability to use them consistent with her constitutional rights to privacy, due process, and equal protection.

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I. The U.S. Constitution and the California Constitution Recognize Sofiya's Fundamental Rights to Privacy, to Procreate, and to Choose to Bear A Child.

California has constitutionalized a noninterference command in reproductive autonomy.

Petitioner frames this as a simple contract case under Cal. Health & Safety Code § 125315 and *Pham v. Superior Court of Orange County* (2025) 117 Cal.App.5th 115. It is not. Petitioner's own Trial Brief asserts that the purported directives conflict with one another across different years and reflect inconsistent disposition selections, raising threshold questions of ambiguity, admissibility, authentication, and enforceability.

Pham is distinguishable because it relied on one single "valid, clear, and unambiguous" IVF agreement. Here, Petitioner's brief asserts that on February 8, 2022, the parties signed two contradictory directives—one transferring embryos to him, one ordering their destruction. And his brief asserts other documents with conflicting disposition directives.

In *Pham*, the court was asked to enforce one single "valid, clear, and unambiguous" IVF agreement, not a stack of contradictory clinic forms. Petitioner seeks to introduce multiple inconsistent forms that do not appear to identify the embryos to which they purport to apply and that, on their face, generates ambiguity about which directive governs and whether any later form superseded an earlier one. The Court cannot order an irreversible destruction of reproductive material based on ambiguity and they are unenforceable for uncertainty. Moreover, *Pham* did not address the constitutional questions at issue here. A court may not enforce private arrangements in a way that violates fundamental constitutional rights absent a compelling justification. *See, e.g.*, *Shelley v. Kraemer*, 334 U.S. 1 (1948) (forbidding courts from enforcing racially restrictive covenants).

The California Constitution states in pertinent part:

> All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.

Cal. Const. Art. I, § 1.

The people of California expanded the Privacy Clause to include additional rights via Proposition 1 in 2022:

> The state shall not deny or interfere with an individual's reproductive freedom in their most intimate decisions, which includes their fundamental right to choose to have an abortion and their fundamental right to choose or refuse contraceptives. This section is intended to further the constitutional right to privacy guaranteed by Section 1, and the constitutional right to not be denied equal protection

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> guaranteed by Section 7. Nothing herein narrows or limits the right to privacy or equal protection.

Cal. Const. Art. I, § 1.1.[2]

Among the fundamental privacy rights protected by the California Constitution are these rights set forth in California's Health and Safety Code:

> Every pregnant individual or individual who may become pregnant has the fundamental right to choose to bear a child or to choose to have and to obtain an abortion, except as specifically limited by this article.
>
> * * *
>
> The state shall not deny or interfere with the fundamental right of a pregnant individual or an individual who may become pregnant to choose to bear a child or to choose to have and to obtain an abortion, except as specifically permitted by this article.

Cal. Health and Safety Code § 123462 (b),(c).

This "fundamental right to privacy" covers "***all matters relating to pregnancy***, including prenatal care, childbirth, postpartum care, contraception, sterilization, abortion care, miscarriage management, and ***infertility care***." Cal. Health and Safety Code § 123462 (emphases added). This right covers not only the right to make reproductive decisions, but the right to implement them.[3]

The U.S. Constitution similarly recognizes a fundamental right to protection from state interference in a woman's choice to bear a child and a right to procreate.[4] The U.S. Supreme Court in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), reinforced its prior holdings as examples of fundamental rights untouched by its decision to overturn *Roe v. Wade*, among these was *Skinner v Oklahoma*, 316 U. S. 535 (1942), which enshrines a fundamental right to procreate. In fact, the *Skinner* Court held that the right to "procreation" is among the most "basic

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[2] A prior superior court decision balancing these interests predate the People of California's enactment of Article I, § 1.1, which elevated reproductive freedom—including the right to infertility care—to a constitutional command.

[3] This right to implement choices is a critical feature of the Reproductive Privacy Act, particularly since it includes infertility treatments like IVF. Analysis of the legislative history reinforces this view. AB 2223 amended the Reproductive Privacy Act's findings and declarations to add that the right "entails the right to make and effectuate decisions" about pregnancy-related matters, and it explicitly lists infertility care. A Legislative Intent Service memo notes the Senate Committee on Health analysis described AB 2223 as adding to the Act's existing findings "that [reproductive privacy] entails the right to make and effectuate decisions about all matters relating to pregnancy … and infertility care." A legislative summary likewise states the bill "states" the Legislature finds the right entails making and effectuating decisions about pregnancy including infertility care, and it repeats the "through its courts and statutes… intent… reaffirm" language. The legislative history affirms the intent that these rights be protected, not abridged, through judicial action.

[4] Any action by this Court that intrudes upon Sofiya's fundamental rights constitutes state action. *See, e.g. Shelley v. Kraemer*, 334 U.S. 1 (1948) ("The actions of state courts and judicial officers in their official capacities are actions of the states within the meaning of the Fourteenth Amendment."). As such, any order that intrudes upon Sofiya's rights, or that have an effect of intruding upon her rights, is subject to strict scrutiny and the compelling interest standard.

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civil rights" and "fundamental to the very existence and survival of the race." *Skinner*, 316 U.S. at 541. *See also Cleveland Bd. Of Educ. V. LaFleur*, 414 U.S. 632, 639 (1974) ("[T]here is a right 'to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.'").

However, when the state acts, as Sofiya is requesting here, to protect "potential life," that decision is subject only to rational basis review. *See Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 300 (2022). The *Dobbs* Court emphasized a "legitimate" state interest in "respect for and preservation of prenatal life ***at all stages of development***." *Id*. at 301 (emphases added). This Court has the power to order the relief Sofiya requests.

II. To Intrude Upon Sofiya's Fundamental Right to Reproductive Autonomy, Her Husband Must Satisfy The Federal Strict Scrutiny and State Compelling Interest Standards, Which He Cannot Do.

Even if the Court were to consider the as of yet undisclosed forms with what Petitioner says contain conflicting disposition directives, he cannot obtain an order to enforce them against Sofiya's fundamental rights absent a showing of a compelling interest, which he cannot do.

A. The U.S. Constitution Mandates Strict Scrutiny.

Max cannot overcome Sofiya's fundamental rights absent a showing of a compelling interest narrowly tailored to the least restrictive means to achieve that interest. In fact, because Sofiya has sufficiently shown an infringement of a fundamental right, Max's request to interfere with that right is presumptively unconstitutional. *Mobile v Bolden*, 446 U S. 55, 76 (1980) (explaining that when state action "impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional."); *Bates v. Little Rock*, 361 U.S. 516, 524 (1960) ("Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling."). State interest in contract enforcement is not enough.

To that end, there must be a showing that interference with personal liberty is "narrowly tailored" to further a "compelling government interest," and that it is "least restrictive means" to further that interest. *See Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989).

B. The California Constitution Mandates the Compelling Interest Standard.

The California Supreme Court subjects any interference with a constitutional privacy right to

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personal autonomy to the compelling interest standard.[5]

In *White v. Davis*, the California Supreme Court held that infringements upon a fundamental autonomy privacy interest must prove "a 'compelling' state interest which justifies the [intrusion] and which cannot be served by alternative means less intrusive on fundamental rights." *White v. Davis*, 13 Cal.3d 757, 772 (Cal. 1975); *accord Conservatorship of Valerie N.*, 40 Cal.3d 143 (Cal. 1985) (applying compelling interest standard in evaluating validity of a statute restricting fundamental, autonomy privacy interest of incompetent adult).[6] The Court clarified this point in *American Academy of Pediatrics v. Lungren*, where it held:

> We conclude that, under the California constitutional privacy clause, a statute that impinges upon the fundamental autonomy privacy right of either a minor or an adult must be evaluated under the demanding "compelling interest" test.

16 Cal.4th 307, 342 (Cal. 1997).

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[5] Strict scrutiny applies to claims under Cal. Const. Art. I, § 1.1. The Reproductive Freedom Clause imported into California constitutional jurisprudence the legal framework set forth in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992). The ballot initiative materials given to voters furthers this point that the voters intended for the application of the strict scrutiny standard in applicable cases. What the voters approved was the constitutional underpinning of *Wade*, reinforced by *Casey*, a recognition that the "liberty" protected by the Due Process Clause of the U.S. Constitution's Fourteenth Amendment includes not only the freedoms explicitly mentioned in the Bill of Rights, but also a freedom of personal choice in certain matters of marriage and family life. The U.S. Supreme Court in *Wade* observed that its previous decisions had recognized that the liberty protected by the Due Process Clause "has some extension to activities relating to marriage, *Loving v Virginia*, 388 U. S. 1, 12 (1967), procreation, *Skinner v Oklahoma*, 316 U. S. 535, 541-542 (1942), contraception, *Eisenstadt v Baird*, 405 U S. [438,] 453-454, *id*., at 460, 463-465 (WHITE, J., concurring in result), family relationships, *Prince v. Massachusetts*, 321 U. S. 158, 166 (1944), and child rearing and education, *Pierce v Society of Sisters*, 268 U. S. 510, 535 (1925), *Meyer v. Nebraska*, [262 U. S. 390, 399 (1923)]." *Wade*, 410 U. S. at 152-53. The *Skinner* Court held that the right to "procreation" is among the most "basic civil rights" and "fundamental to the very existence and survival of the race." *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942). Central to the holdings in *Wade* and *Casey* was the application of strict scrutiny to state action that interfered with a woman's fundamental rights to reproductive privacy within the context of a fetal viability framework. *Casey*, 505 U.S. at 840-44. The Court acknowledged both in *Casey* and in *Wade* that the state did have an interest in what it termed "potential life." *Id*. at 840. However, under the viability framework, the state's interest in potential life exists on a spectrum, with the state's interest at its apex after fetal viability and just before birth. *Id*. Under the viability framework, the state's interest in interfering with a woman's reproductive decisions to choose to bear a child at the embryonic stage is at its nadir. In this instance, interference with Sofiya's fundamental rights to privacy and to choose to bear a child under Sec. 1.1 of Article I must pass strict scrutiny upon proof that "the limitation is both necessary and narrowly tailored to serve a compelling governmental interest." *Griswold v. Connecticut*, 381 U. S. 479, 485 (1965). The voters of California intended for the *Wade* and *Casey* framework to become a part of California Constitutional law. After all, without the strict scrutiny requirement, the rights conferred by *Wade*, *Casey*, and their progeny are meaningless. But, while strict scrutiny applies to Sofiya's rights asserted under Section 1.1, Max cannot meet his burden under the compelling interest standard applicable under Section 1.

[6] California's privacy jurisprudence clarifies that while the compelling interest standard applies in instances of personal bodily autonomy, a lesser standard applies to other constitutional privacy claims. *See* David A. Carrillo, Stephen M. Duvernay, Rodolfo E. Rivera Aquino & Brandon V. Stracener, *California Constitutional Law: Privacy*, 59 San Diego L. Rev. 119 (2022). Available at: https://digital.sandiego.edu/sdlr/vol59/iss1/4 (last visited Feb. 12, 2026) (analyzing and critiquing the evolution of California's privacy doctrines).

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Critically, the California Supreme Court held that intrusion upon an "autonomy privacy interest" may not be justified simply by a "competing interest" that would justify an impingement of what it termed a "less central privacy interest." *Id*.

It is only those privacy cases involving a fundamental autonomy privacy interest that are subject to the compelling interest standard. *Lewis v. Superior Court*, 3 Cal.5th 561, 573 (Cal. 2017). *Hernandez v. Hillsides, Inc*., 47 Cal.4th 272, 288 (Cal. 2009) ("except in the rare case in which a 'fundamental' right of personal autonomy is involved[,] the defendant need not present a 'compelling' countervailing interest.").

The California Supreme Court made clear in *Lungren* and reaffirmed in *Lewis* that once a party establishes the factors set forth in *Hill v. NCAA*, 7 Cal.4th 1 (Cal. 1994), the burden shifts to the opposing party to satisfy the appropriate justification for the privacy invasion, in this case the compelling interest standard. Sofiya satisfies that showing: a legally protected privacy interest, a reasonable expectation of privacy, and a serious invasion thereof. *Hill*, 7 Cal.4th at 35-37.

C. Max Does Not Proffer a Compelling Interest.

Max has not articulated a constitutionally cognizable compelling interest. While the rights Sofiya is invoking include privacy, procreation, reproductive autonomy, and the right to bear a child, the order Max wants is a veto that extinguishes those rights. Max's trial brief raises, in only cursory form, a right to be free from "fathering a child against his will," but the liberty interest he asserts is not in the nature of a right to bodily autonomy: he is not being asked to undergo a procedure, provide genetic material, or do anything with his body against his will. The liberty interest that he is claiming is in effect downstream: child support, legal status, and personal preference. These are not compelling interests in the constitutional sense and they do not amount to "liberty" in any understanding of state or federal constitutional law.

Respectfully, this Court cannot order a remedy that extinguishes Sofiya's constitutional autonomy rights over these kinds of interests. Max's potential interests are not an "obvious invasion" of bodily decisional autonomy because nothing is being compelled from him. At most, his interest is a competing privacy interest of the non-bodily decisional autonomy variety subject to balancing under *Hill* and it cannot be elevated into a veto power over Sofiya's fundamental rights.[7]

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[7] Max does not proffer a countervailing fundamental right. California courts determine whether a claimed right is a recognized "fundamental" right by anchoring the analysis in the relevant doctrine. Under substantive due process, California courts use a two-step method: (1) assess whether the rights claimant asserts a "careful description" of the asserted liberty interest; and (2) determine whether the interest, as so carefully described, is supported by (i) our history, (ii) our traditions, and (iii) the conscience of our people. Max cannot meet his burden to prove entitlement to a

LAW OFFICE OF J.R.HOWELL

D. Destruction of the Embryos is the Most Intrusive Remedy and Narrower Alternatives Exist.

There are lesser restrictive alternatives to protecting any interest Max may have and his reliance on the forced parenthood argument is obsolete. The 2024 amendment to Family Code § 7613(e) provides a specific statutory mechanism to sever his legal and financial obligations, ensuring he is treated as a donor, not a parent. This Court can grant Sofiya the embryos while simultaneously issuing an order of non-parentage for Max, granting him total relief from the burdens he fears.

III. The Equal Protection Clause of the U.S. Constitution and the California Constitution Protect Sofiya's Reproductive Rights.

Any order that interferes with Sofiya's reproductive autonomy to use and control the embryos is state action that gives her husband a veto power over her reproductive rights.

A spousal veto is an equal-protection problem because it empowers one spouse to control the other spouse's reproductive decision in a sex-linked way. Because only Sofiya can gestate, conditioning her ability to attempt pregnancy on Max's consent functionally recreates the discredited "head-and-master" concept of unilateral spousal control banned by the U.S. Supreme Court decades ago. *See Kirchberg v. Feenstra*, 450 U.S. 455, 460 (1981). In *Kirchberg*, the Court invalidated a marital-property regime that made the husband "head and master," with unilateral power over jointly owned community property, as a violation of equal protection. *Id*. at n. 2. This is a form of spousal veto power that the Court has long held unconstitutional. *See Planned Parenthood of Central Missouri v Danforth*, 428 U S. 52 (1976) (the State cannot "delegate to a spouse a veto power which the [S]tate itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy.").

California equal protection law is even more skeptical of sex-based hierarchies: the California Supreme Court treats sex classifications as suspect and applies strict scrutiny. *See, e.g.*,

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substantive due process right. Even where a fundamental right is implicated, strict scrutiny applies only upon a showing that a "real and appreciable impact" or "significant interference" with its exercise. Where a fundamental right is asserted under the California Constitution's Privacy Clause, to determine whether such a right is covered thereunder, the courts require a showing of (1) a legally protected privacy interest, (2) a reasonable expectation of privacy, and (3) a serious invasion, followed by a justification and less-intrusive-alternative analysis, with a compelling interest requirement only applicable in those cases involving an "obvious invasion" of interests "fundamental to personal autonomy." There is no fundamental right under the U.S. or California constitutions for a spousal veto power or destruction power over existing, jointly created embryos, sufficient to override the other party's statutorily and constitutionally protected right to attempt pregnancy through infertility care. After *Dobbs*, the state can force a woman to become a parent against her will, to carry a fetus to term, and to undergo childbirth, without any consideration for her health and safety. Indeed, post-*Dobbs*, in states that have outlawed women's reproductive choices, women have died as a result. If a woman has no fundamental right against forced parenthood, even in circumstances where childbirth can kill her, the law does not bestow upon Max, who is not subject to bodily intrusion, a freedom from state interference that results in an extreme violation of Sofiya's rights.

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Sail'er Inn, Inc. v. Kirby, 5 Cal. 3d 1 (Cal. 1971). When the people of California conferred upon pregnant individuals, or individuals who could become pregnant, a fundamental right to choose to bear a child via infertility treatment, a court order that subordinates Sofiya's rights to the consent of her husband creates an unequal, sex-linked barrier that cannot survive heightened review under California equal protection, and at a minimum cannot satisfy the federal requirement that gender-linked burdens be justified by an "exceedingly persuasive justification.[8]"

IV. Any Order Interfering With Sofiya's Use of the Embryos, Including Destruction or Delayed Use, Must Come With an Equalization Payment.

To the extent the cryopreserved embryos were created and maintained during marriage through community labor and community funds, they constitute a community asset or, at minimum, a community property interest subject to equal division. *See* F.C. § 2550. Because embryos cannot be divided in kind, any order that results in their destruction, donation, or functional loss through delay necessarily divests Sofiya of her one-half interest. Equity therefore requires an equalizing payment or offset to Sofiya for the loss of her one-half community interest and the community expenditures incurred to create and preserve the embryos (including IVF, laboratory, and storage costs).

CONCLUSION

For these reasons, the Court should deny any request to destroy the embryos or otherwise place them beyond Sofiya's use, and should award Sofiya exclusive possession, control, and decision-making authority over them. To the extent Max claims an interest in avoiding parental status, the Court should adopt the least restrictive alternative by entering an order consistent with Family Code § 7613(e) confirming Max's nonparentage and eliminating any purported downstream obligations, rather than extinguishing Sofiya's rights. In the alternative, if the Court orders any remedy that results in destruction or functional loss through delay, equity requires an equalization payment to compensate Sofiya for the loss of her interests.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 13, 2026

J.R. Howell (Cal. Bar No. 268086)
Attorney for Respondent

[8] *See also Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) ("a spousal notice requirement enables the husband to wield an effective veto over his wife's decision…"). While the U.S. Supreme Court rejected the central holding of *Wade*, the equal protection analysis in *Casey* remains valid.

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THE LAW OFFICE OF JASON P. KOCH
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ATTORNEYS FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S EXHIBIT LIST** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

RESPONDENT'S EXHIBIT LIST

EXHIBIT	DESCRIPTION
A	Legislative History of California's Reproductive Privacy Act
B	Legislative History of California's Constitution Article I, Sec. 1.1
C	Deposition Transcript of Petitioner Max Borenstein and Exhibits
D	Invoices from Counsel in support of her claims for fees and sanctions

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

ANNE E. GROVER (*Pro Hac Vice*)
GROVER & BADALIAN, LLC

JASON P. KOCH
THE LAW OFFICE OF JASON P. KOCH

Date: February 13, 2026

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

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ATTORNEY FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S MOTION *IN LIMINE* TO BAR INTRODUCTION OF DOCUMENTS REQUESTED BUT NOT DISCLOSED IN DISCOVERY AND PRODUCED 1 COURT DAY BEFORE TRIAL, and OTHER DOCUMENTS PRODUCED 4 COURT DAYS BEFORE TRIAL** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at before the trial of this matter on February 24, 2026, at 8:30AM in Department 35 of the above-entitled Court, Respondent Sofiya Goldshteyn will move the Court *in limine* for an order prohibiting Max from:

1. Presenting or referring to any and all evidence that was not disclosed in response to written document production requests;

2. Presenting or referring to any and all evidence that was not furnished to Sofiya until yesterday after 4PM in violation of LASC Local Rule 5.15(b). These documents are ***over 240 pages***. appear to consist of Max's legal bills dating back to 2023, even though the Parties' Deal Memo releases all claims against one another and even though the Deal Memo explicitly states that each party is to bear their own legal fees.

3. Presenting or referring to any and all evidence that was furnished to Sofiya only 4 court days before trial in violation of LASC Local Rule 5.15(b). These documents purport to be written documents concerning the parties' embryos that have been in Petitioner's possession and withheld from Sofiya despite numerous discovery requests seeking them. He has not, however, released the embryo-related documents that do not support his claims. As such, if the Court allows the presentation of this last-minute, surprise evidence, Sofiya requests that any document that purports to transfer control, use, or possession to Max of any and all embryos created by the parties during marriage, or otherwise strips Sofiya of any interest therein, as an interspousal transaction pursuant to Family Code § 721 and to presume them unenforceable unless Max proves by clear and convincing evidence that Sofiya entered into the transaction freely and voluntarily, with full knowledge of all the facts, and with a complete understanding of its effects. *Marriage of Delaney* (2003) 111 CA4th 991, 996-97, 4 CR3d 378, 382. Sofiya respectfully requests that any such finding be included with the Court's statement of decision.

This Motion is based on the grounds set forth in Local Rule 5.15(b), Code of Civil Procedure § 2023.030, and is further based on the attached memorandum of points and authorities, the attached declaration of J.R. Howell, Esq., and upon any other oral or documentary evidence that may be presented at the trial of this matter. Sofiya has complied with LASC Local Rule 3.57, as set forth in the supporting declaration.

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LAW OFFICE OF J.R.HOWELL

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 23, 2026

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

POINTS AND AUTHORITIES IN SUPPORT

I. Petitioner's Exhibit 6: Max's Attorney Invoices Produced Yesterday After 4:00PM Should Be Excluded And His Attorney Fee Request Should Not Be Heard.

After 4pm the day before trial, Petitioner produced over 240 pages of documents containing his attorney fees. We have no idea why, what claim they are related to, what statutory or other legal basis he may be seeking his fees for (we assume he is seeking to recoup his legal fees), even though the trial is limited to embryo issues.

The parties' Deal Memo makes clear that each party is to bear their own attorney fees. Additionally, the parties' agreed via that Deal Memo to resolve all of their claims against one another, which necessarily includes whatever grounds he purports to assert for those fees.

Before the Court could even consider imposing any type of attorney fee sanction, Sofiya is entitled to proper advanced written notice. *See, e.g.*, Fam. Code § 271(b) ("An award of attorney's fees and costs as a sanction pursuant to this section shall be imposed ***only after notice by the requesting party*** or the court to the party against whom the sanction is proposed and opportunity for that party to be heard is provided by the court.").

Pursuant to *Levy v. Blum* (2001) 92 Cal.App.4th 625, 638, proper notice must specify the code section or court rule relied upon so the defending party understands the legal standard they must meet to mount a defense. As of this date, Sofiya is still guessing what Max's claim will be, what facts it is based on, and what legal basis he is asserting.

Moreover, the invoices were produced just yesterday after 4PM. Without proper notice, Sofiya is prejudiced in that her counsel has insufficient time and information to evaluate the reasonableness of Max's legal bills and his claims. The Local Rules are clear: exclusion of untimely exchanged exhibits is mandatory absent a showing of good cause:

> All exhibits listed in a party's exhibit list exchanged pursuant to the TRC, MSC, or other court order must be pre-marked and exchanged at least five court days prior to the initial date set for trial. ***Absent a showing of good cause***, exhibits not pre-marked and exchanged ***will not be received in evidence***.

LASC Local Rule 5.15(b) (emphasis added).

Lastly, the order setting this trial date, modifying the prior TSC Order, is explicit that the trial is limited to the issue of the embryos. Max's effort to seek recoupment for his legal bills dating back to 2023 is not a part of that Order.

Sofiya requests that these legal invoices, Petitioner's Exhibit 6, be excluded in its entirety and that no testimony be heard on the subject.

/ /

LAW OFFICE OF J.R.HOWELL

II. Petitioner's Exhibits 1-4: Max's Cherry-Picked Embryo Documents Exchanged 4 Court Days Before Trial Should Be Excluded.

Petitioner's Exhibits 1-4 appear to be four documents concerning the parties' embryos. One of them is a letter, the other three appear to be clinic forms. Three of them purport to contain embryo disposition directives. Petitioner's Trial Brief, served on Respondent on February 17, 2026, referred to these documents, as did his Trial Setting Conference Brief on March 3, 2025.

Respondent sought these documents in discovery. Petitioner did not disclose them until four court days before the trial.

Discovery history and nonproduction. These documents were squarely requested long ago and were withheld from Sofiya.

In Respondent's Requests for Production of Documents (Set Two), No. 56, served March 13, 2024, Respondent requested: "any Documents evidencing, or related to, Your claim to a property or other legal interest, if any, in the embryos created after Respondent's cancer diagnosis." Petitioner's responses did not include the embryo-related documents that were first produced on February 18, 2026.

Even though Petitioner referred to these documents in his March 3, 2025, Trial Setting Conference Brief, Petitioner did not identify them in response to Form Interrogatory (Set 3) No. 17, and when asked in RFA (Set One) No. 12 ("Admit that there are no written agreements concerning the existing unimplanted embryos"), Petitioner responded: "Responding Party is neither able to admit or deny this Request." These April 15, 2025 responses were served more than a month after Petitioner had already put the alleged existence of "agreements" at issue in his March 3, 2025 filing.

The agreements were requested again in the document request that accompanied Petitioner's deposition (where Petitioner again referred to embryo disposition directives), and they still were not produced at that time. Additionally, Petitioner has had an ongoing statutory duty of accurate, complete, and continuing disclosure pursuant to the Family Code, independent of formal discovery requests.

Given the public policy for full disclosure, it is within the Court's policy to exclude discovery which has been intentionally withheld from another party. (*See* Code Civ. Proc., § 2023.030, subd. (C); and *Thoren v. Johnson & Washer* (1972) 29 Cal.App.3d 270, 274 [excluding witness undisclosed by party from testifying at trial].) Section 2023.030(c) of the Code of Civil Procedure gives the court discretion to impose an evidentiary sanction against parties who misuse the discovery process. The willful failure to disclose known documents about core issues in discovery is one of the

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misuses of the discovery process for which a judge may sanction the party by barring it from presenting that evidence at trial. (See *Thoren*, supra, at 274.)

Trial exhibit exchange violations. These documents also were not timely exchanged as trial exhibits. They were not identified on Petitioner's exhibit list issued prior to the MSC, and LASC Local Rule 5.15(b) requires that exhibits on an exhibit list be furnished no less than five court days prior to trial. Trial is February 24, 2026, but the documents were emailed on February 18, 2026. This is prejudicial on its face, particularly given Petitioner's position that these documents are "controlling" and purportedly dispositive. Local Rule 5.15(b) is clear that absent a showing of good cause, exclusion is mandatory for exhibits not provided according to this timeline.

Alternatively, conditionally admit Exhibits 1-4 subject to Family Code § 721. As an alternative remedy, Sofiya requests that if the Court is inclined to excuse Petitioner's withholding of the embryo-related documents, while also continuing to conceal other documents purporting to contain embryo disposition directives, that the Court do so subject to Family Code § 721, and hold that any documents purporting to transfer the embryos away from Sofiya be deemed an interspousal agreement subject to undue influence and shift the burden to Max to prove by clear and convincing evidence the factors set forth in the statute.

CONCLUSION

For the foregoing reasons, Sofiya respectfully requests the exclusion of the evidence above or, alternatively, for a finding pursuant to Family Code § 721.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 23, 2026

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

DECLARATION OF J.R. HOWELL

I, J.R. Howell, declare,

1. I am an attorney at law duly licensed to practice before all the courts in the State of California and the attorney of record for Respondent Sofiya Goldshteyn in this matter.

2. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would competently testify to such facts under oath.

3. This declaration is made in support of Respondent's Motion *in Limine*.

4. On behalf of Respondent, on February 23, 2026, after I received Petitioner's Exhibit 6, over 240 pages of documents, after 4PM the day before trial, I wrote and sent a letter to Petitioner's Counsel describing the motion *in limine* I planned to file and sought to obtain a solution without court intervention. A copy of the letter is attached hereto as Exhibit A.

5. In response, Petitioner's counsel indicated his opposition to the motion and to resolving the matter.

6. The specific prejudice that will be suffered if the motion is not granted is that the introduction of evidence not just withheld from Respondent for over a year, but produced fewer than five court days before trial—including one set of documents of over 240 pages produced after 4PM the day before trial—will cause unfair surprise to the Respondent. To the extent exhibit 6 seeks legal fees, the lack of notice amounts to a due process violation. Respondent will have not had an opportunity to conduct discovery as to such documents or any related witnesses to determine the scope of their testimony or their demeanor while testifying. Requiring Respondent to conduct a trial with documents, particularly exhibits 1-4, that Petitioner has knowingly withheld for more than a year is contrary to the public policy disfavoring concealment as a trial strategy, and would likely cause the Respondent and her counsel to be unable to effectively examine witnesses and evidence at trial. This would further not only substantively impact the Respondent's presentation of evidence, but entails the danger that Respondent's reasonable lack of preparation to examine the evidence would be viewed in a prejudicial light by the trier of fact.

7. Further, one of the documents produced 4 days ago, appears to contain a mechanism to revoke the embryo disposition directive at issue, which perhaps is precisely why Max has concealed it from Sofiya for so long. After all, he stands to benefit from hiding the revocation mechanism from Sofiya.

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LAW OFFICE OF J.R.HOWELL

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

Executed this 23rd Day of February in Los Angeles, California.

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 23, 2026

By: _____
J.R. Howell (State Bar No. 268086)
One of the Attorneys for Respondent,
Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

EXHIBIT

A

Meet and Confer (LASC LR 3.57) re Late-Disclosed Embryo "Disposition Directives" and Trial Exhibits

1 message

J.R. Howell <jr@lojrh.com> Mon, Feb 23, 2026 at 2:33 PM
To: "Garry M. Gekht, Esq." <garry@ktgdllp.com>
Cc: Jason Koch <jason@jasonkochlaw.com>, Anne Grover <agrover@gbfamilylawyers.com>, "Carly Timm-Bijold, Esq." <carly@ktgdllp.com>, Borenstein Team <mbore@ktg.law>
Bcc: Sofiya Alexandra <thesofiya@gmail.com>

Garry,

Pursuant to LASC Local Rule 3.57, this email is Respondent's meet-and-confer effort regarding Petitioner's late disclosure and intended use at trial of purported embryo disposition agreements and related documents that you emailed to me on February 18, 2026, and that Petitioner now seeks to offer as trial exhibits in the embryo-only trial set for February 24, 2026.

Discovery history and nonproduction. These documents were squarely requested long ago and were not produced. In Respondent's Requests for Production of Documents (Set Two), No. 56, served March 13, 2024, Respondent requested: "any Documents evidencing, or related to, Your claim to a property or other legal interest, if any, in the embryos created after Respondent's cancer diagnosis." Petitioner's responses did not include the embryo-related documents that were first produced on February 18, 2026. Petitioner also first raised the existence of embryo disposition "agreements" in his Trial Setting Conference Brief filed March 3, 2025. Yet in discovery served April 15, 2025, Petitioner still did not identify these purported agreements in response to Form Interrogatory (Set 3) No. 17, and when asked in RFA (Set One) No. 12 ("Admit that there are no written agreements concerning the existing unimplanted embryos"), Petitioner responded: "Responding Party is neither able to admit or deny this Request." These April 15, 2025 responses were served more than a month after Petitioner had already put the alleged existence of "agreements" at issue in his March 3, 2025 filing. The agreements were requested again in the document request that accompanied Petitioner's deposition (where Petitioner again referred to embryo disposition directives), and they still were not produced at that time. Additionally, Petitioner has had an ongoing statutory duty of accurate, complete, and continuing disclosure pursuant to the Family Code, independent of formal discovery requests.

Trial exhibit exchange violations. These documents also were not timely exchanged as trial exhibits. They were not identified on Petitioner's exhibit list issued prior to the MSC, and LASC Local Rule 5.15(b) requires that exhibits on an exhibit list be furnished no less than five court days prior to trial. Trial is February 24, 2026, but the documents were emailed on February 18, 2026. This is prejudicial on its face, particularly given Petitioner's position that these documents are "controlling" and purportedly dispositive. Local Rule 5.15(b) is clear that absent a showing of good cause, exclusion is mandatory for exhibits not provided according to this timeline.

Requested resolution. To avoid motion practice and to comply with Local Rule 3.57, Respondent requests that Petitioner withdraw Petitioner's Exhibit List in its entirety (as served) and confirm by email that Petitioner will not seek to offer any of the late-produced embryo disposition documents (or any other embryo "directives" not timely produced and exchanged) at trial; and the attorney fee invoices that have never been produced, even though they are listed on Petitioner's exhibit list, despite the deal memo's attorney fee provision.

Please confirm in writing no later than 5:00 p.m. on February 23, 2026. If Petitioner declines, Respondent will seek appropriate relief, including a motion in limine/evidence sanction to exclude the documents and for monetary sanctions, based on the discovery failures, the violation of mandatory disclosure obligations, and the failure to timely exchange trial exhibits under the Local Rules.

Sincerely,

J.R. Howell
Attorney
The Law Office of J.R. Howell

(323) 897-8656

jr@lojrh.com

2219 Main Street, No. 436, Santa Monica, CA 90405

****
This message was sent from J.R. Howell and is intended only for the designated recipient(s). It may contain confidential or proprietary information and may be subject to the attorney-client privilege or other confidentiality protections. If you are not a designated recipient, you may not review, copy or distribute this message. If you receive this in error, please notify the sender by reply e-mail and delete this message. Thank you.

****

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Attorney for Respondent

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MAX BORENSTEIN, Petitioner, vs. SOFIYA GOLDSHTEYN, Respondent.	**Case No. 22STFL08826** Assigned for all purposes to the Hon. Scott Nord, Dept. 35 **PROOF OF SERVICE** **Dept: 35** **Trial Date: Feb. 24, 2026** **Time: 8:30AM**

I, J.R. HOWELL, declare that I am an attorney licensed to practice law in the State of California, I am over the age of eighteen years and am not a party to this action. My business address is 2219 Main Street, Suite 436, Santa Monica, CA 90405, in Los Angeles County, California. On **February 23, 2026**, I served the following document(s):

RESPONDENT'S MOTION *IN LIMINE*

on the parties stated below, by the following means of service:

Garry Gekht, Esq.
Carly J. Timm-Bijold, Esq.
Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
mbore@ktg.law

() (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business at the Firm's office address in Santa Monica, California. Service made pursuant to this

paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(X) (BY ELECTRONIC SERVICE) by causing the foregoing document(s) to be electronically served using a court approved Electronic Service Provider which constitutes service of the filed document(s) on the individual(s) listed on the service list.

() (BY E-MAIL SERVICE) I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the below service list.

() (BY OVERNIGHT DELIVERY) I served the foregoing document by an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth in the attached service list, with fees for overnight delivery paid or provided for.

() (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the named addressee(s) in the attached service list.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Date: **February 23, 2026**

J.R. Howell (Cal. Bar No. 268086)

LAW OFFICE OF J.R.HOWELL

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ATTORNEY FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE; POINTS AND AUTHORITIES [EVID. CODE § 452, 453]** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

REQUEST FOR JUDICIAL NOTICE AND NOTICE OF LODGING

TO THE HONORABLE COURT, TO THE PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Respondent Sofiya Goldshteyn, requests pursuant to Evidence Code §§ 452 and 453 that this Court take judicial notice of the papers and pleadings filed in this case, and certain historical documents from the legislative history of the California Reproductive Privacy Act, Health & Safety Code § 123462, lodged as **Exhibit A**, and the legislative history and ballot materials furnished to voters regarding 2022's Proposition One to add to the state constitution Section 1.1. of Article I, lodged as **Exhibit B**.

This request is based on the following Points and Authorities and the Declaration of Anna Maria Bereczky-Anderson of Legislative Intent Services, Inc. enclosed with Exhibit A.

Please also take notice that Respondent is lodging the above-referenced documents with the Court.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 23, 2026

By: _____
J.R. Howell (State Bar No. 268086)
Attorney for Respondent,
Sofiya A. Goldshteyn

LAW OFFICE OF J.R.HOWELL

POINTS AND AUTHORITIES IN SUPPORT

I

THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE LEGISLATIVE HISTORY OF THE REPRODUCTIVE PRIVACY ACT AND THE LEGISLATIVE HISTORY AND BALLOT MATERIALS REGARDING CAL. CONST. ART. I, § 1.1.

The following Points and Authorities deal briefly with the law of judicial notice of legislative documents and ballot materials, which may guide the Court as to the legislative intent beyond the Reproductive Privacy Act and/or the voters' intent behind Cal. Const. Art I, § 1.1 on the right to reproductive freedom.

A. The Law of Judicial Notice for Legislative Documents.

1. Discretionary Judicial Notice. Judicial notice may be taken of "official acts of the legislative, executive and judicial departments of the United States, or any state of the United States." Evidence Code § 452 (c); *People v. Snyder* (2000) 22 Cal.4th 304, 315 fn.5; *Delany v. Baker* (1999) 20 Cal.4th 23, 30; *Post v. Prati* (1979) 90 Cal.App.3d 626, 634.

2. Discretionary Judicial Notice made Mandatory. Under Evidence Code § 452(c) a court has discretion to take judicial notice. Pursuant to Evidence Code § 453, Respondent requests that judicial notice be mandatory. Notice is duly provided to opposing counsel as set forth in the accompanying proof of service and the information below gives the Court sufficient information to take judicial notice of the requested materials. Exhibits A and B were identified on Respondent's Exhibit List provided to Petitioner on February 16, 2026, and electronic copies were furnished to Petitioner that same day. Hard copies were sent via courier to Petitioner's office on February 23, 2026.

3. No Judicial Notice Needed for Published Documents. Despite, or perhaps as a result of, the general statutory rule and the magnitude of case law support for judicial notice of legislative documents, several decisions of the California Supreme Court have found formal judicial notice unnecessary for certain types of documents. For these documents, known as "published" legislative documents, a simple citation is sufficient to bring them to a court's attention. *Sharon S. v. Superior Court* (*Annette F.*) (2003) 31 Cal.4th 417, 440 fn.18; *Quelimane Company Inc. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 46 fn.9.

"Published" legislative history appears to include several common types of documents publicized by the Legislature in book format or on the web. Respondent is unaware of any documents in Exhibits A or B that are not of this common type.

4. The Judicial Function. Whether the judicial notice is formal or informal, the Court's mission is the same. Under CCP § 1859, "In the construction of a statute the intention of the

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Legislature…is to be pursued, if possible." Or, as the California Supreme Court has stated it, the "touchstone of statutory interpretation" is the "probable intent of the Legislature…. It cannot be too often repeated that due respect for the political branches of our government requires us to interpret the laws in accordance with the expressed intention of the Legislature." *California Teacher's Assn. V. Governing Board of Rialto United School District* (1997) 14 Cal.4th 627, 632 - 633.

5. Relevance of the Documents. Whether the judicial notice requested is mandatory or discretionary, formal or informal, legislative documents must be relevant to the construction of the statute. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 fn.1; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063-1065.

In this case, Respondent is asserting her fundamental right to choose to bear a child, which according to the plaint text of the state, through infertility care. The legislative history reveals detailed discussed about the legislature's intent to include IVF, at issue in this matter, within the protection of the Reproductive Privacy Act (Cal. Health and Safety Code § 123462). Additionally, Respondent asserts her state constitutional rights to reproductive freedom (including privacy, due process, and equal protection). As Respondent asserts the legal framework for assessing these rights, the materials furnished to the voters and the official government documentation concerning the ballot proposition that eventually became the constitutional amendment may be relevant to this Court's analysis. Judicial notice is therefore appropriate.

6. Legislative Committee Analysis. Judging from the volume of cases, Assembly and Senate committee analyses are probably the most frequently judicially noticed legislative documents. Consider for example just the following very short list of California Supreme Court cases: *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345,359 fn.7; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 – 100; *American Financial Services Assn. V. City of Oakland* (2005) 34 Cal.4th 1239, 1257; *Parnell v. Adventist Health System/West* (2005) 35 Cal.4th 595, 604. Documents of this type are included in Exhibit A.

Specifically as to legislative committee analysis, the Supreme Court stated in *In re J.W.* (2002) 29 Cal.4th 200, 211:

> To determine the purpose of legislation, a court may consult contemporary legislative committee analyses of that legislation, which are subject to judicial notice. [Citations] As this court has recognized,... these materials, including analyses of both the Senate and Assembly committees on Judiciary, show an intent to codify....

Also instructive is the decision in *Hutnick v. U.S. Fidelity and guaranty Co.* (1988) 47 Cal.3d 456,465, where the court stated:

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> The Court of Appeal declined to consider this report, (Assembly Committee on Judiciary) stating that 'the views of a committee staff member are not appropriate legislative history.' However it is well established that reports of legislative committees and commissioners are part of a statute's legislative history and may be considered when the meaning of a statute is uncertain. [Citations]….The rationale for considering committee reports when interpreting statutes is similar to the rationale for considering voter materials when construing an initiative measure. In both cases it is reasonable to infer that those who actually voted on the proposed measure read and considered the materials presented in explanation of it, and that the materials therefore provide some indication of how the measure was understood at the time by those who voted to enact it.

6. Authentication. Although there is no requirement under judicial notice for authentication as there is for authentication of writings introduced into evidence, the Legislative Intent Service documents have been authenticated by the Declaration of Anna Maria Bereczky-Anderson of Legislative Intent Services, Inc. *See* Exhibit A attached. Declarations of the researchers at Legislative Intent Services, Inc. have been relied upon in the past for this purpose. *See People v. Connor* (2004) 115 Cal.App.4th 669,681 fn.3; *Whaley v. Sony Computer America, Inc*. (2004) 121 Cal.App.4th 479,487 fn.4.

7. Complete or Partial Histories. Courts differ on their preference for complete or partial legislative histories. The California Supreme Court and the Second District Court of Appeal appear to want entire histories. *Drouet v. Superior Court* (*Broustis*) (2003) 31 Cal.4th 583, 598; *Alch v. Superior Court* (*Time Warner Entertainment*) (2004) 122 Cal.App.4th 339, 364 fn.11 and 12. The Third District Court of Appeal, on the other hand, in a case on this issue directed submission of individual documents. *Kaufman & Broad Communities Inc. v. Performance Plastering, Inc*. (2005) 133 Cal.App.4th 26, 31.

Respondent in this case has attempted to satisfy both approaches: Respondent specifically asks judicial notice of the entire legislative history and ballot materials available for review, download and judicial notice.

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CONCLUSION

Based on the above cited statutes and cases, Respondent respectfully requests the Court to take judicial notice of the legislative and ballot documents lodged as **Exhibit A** and **Exhibit B** and to consider its actions to be mandatory.

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 23, 2026

By: _____
J.R. Howell (State Bar No. 268086)
Attorney for Respondent,
Sofiya A. Goldshteyn

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Attorney for Respondent

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

MAX BORENSTEIN, Petitioner, vs. SOFIYA GOLDSHTEYN, Respondent.	**Case No. 22STFL08826** Assigned for all purposes to the Hon. Scott Nord, Dept. 35 **PROOF OF SERVICE** **Dept: 35** **Trial Date: Feb. 24, 2026** **Time: 8:30AM**

I, J.R. HOWELL, declare that I am an attorney licensed to practice law in the State of California, I am over the age of eighteen years and am not a party to this action. My business address is 2219 Main Street, Suite 436, Santa Monica, CA 90405, in Los Angeles County, California. On **February 23, 2026**, I served the following document(s):

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE AND NOTICE OF LODGING

on the parties stated below, by the following means of service:

Garry Gekht, Esq.
Carly J. Timm-Bijold, Esq.
Kaplan, Trope, Gekht & DeCarolis, LLP
10866 Wilshire Blvd., Suite 1650
Los Angeles, CA 90024
mbore@ktg.law

() (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence shall be

deposited with the United States Postal Service this same day in the ordinary course of business at the Firm's office address in Santa Monica, California. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.

(X) (BY ELECTRONIC SERVICE) by causing the foregoing document(s) to be electronically served using a court approved Electronic Service Provider which constitutes service of the filed document(s) on the individual(s) listed on the service list.

() (BY E-MAIL SERVICE) I caused such document to be delivered electronically via e-mail to the e-mail address of the addressee(s) set forth in the below service list.

() (BY OVERNIGHT DELIVERY) I served the foregoing document by an express service carrier which provides overnight delivery, as follows: I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth in the attached service list, with fees for overnight delivery paid or provided for.

() (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the named addressee(s) in the attached service list.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the above is true and correct.

Date: **February 23, 2026**

J.R. Howell (Cal. Bar No. 268086)

LAW OFFICE OF J.R.HOWELL

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ATTORNEY FOR RESPONDENT,
SOFIYA A. GOLDSHTEYN

Electronically FILED by
Superior Court of California,
County of Los Angeles
2/24/2026 8:00 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Barajas, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, FAMILY LAW DIVISION

IN RE MARRIAGE OF: MAX D. BORENSTEIN, Petitioner, v. SOFIYA A. GOLDSHTEYN, Respondent.	Case No. 22STFL08826 **RESPONDENT'S REQUEST FOR STATEMENT OF DECISION, PURSUANT TO CODE CIV. PROC. § 632** Trial Date: February 24, 2026 Time: 8:30AM Place: Dept. 35

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

Respondent SOFIYA A. GOLDSHTEYN ("Respondent" or "Sofiya") hereby requests a Statement of Decision explaining the factual and legal basis for the Court's decision pursuant to Code of Civil Procedure § 632 and California Rules of Court, Rule 3.1590.

Because the trial on the embryo issue is anticipated to conclude in less than eight (8) hours over one calendar day, this request is timely and is made prior to the submission of the matter for decision.

Respondent further respectfully requests that the Court's Statement of Decision expressly address the following principal controverted issues, and that the Court make findings on the subordinate issues.

I. PRINCIPAL CONTROVERTED ISSUES AND REQUESTED FINDINGS

A. Disposition Order: Who Receives Exclusive Control and What the Order Specifically Requires

Respondent requests that the Court clearly state:

1. Which party is awarded exclusive control, possession, and decision-making authority over each embryo at issue (identified with as much specificity as the evidence permits).
2. Whether the Court orders destruction, donation, indefinite storage, mutual-consent veto, transfer to either spouse, or another disposition.
3. The precise operational terms of any order directed to the clinic/storage custodian(s).

B. Constitutional Issues: Reproductive Autonomy, Privacy, Due Process, and Equal Protection.

Respondent requests that the Court's Statement of Decision clearly identify: (1) the constitutional provisions at issue, (2) whether the Court found state action, (3) the applicable standard of review, and (4) the application of that standard to the facts found.

1. State action / judicial enforcement

a. Whether the Court's order concerning embryo control/disposition constitutes "state action."

b. Whether judicial enforcement of private arrangements that restrict reproductive autonomy is subject to constitutional limits (including whether the Court considers and applies the principle that a court may not enforce private agreements in a manner that violates constitutional rights).

2. Respondent's rights under California law

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Respondent requests findings on whether, and to what extent, Respondent has:

a. a constitutional privacy right under Cal. Const., art. I, § 1 implicated by an order destroying embryos or preventing their use, both against state action and from Petitioner's actions;

b. a constitutional reproductive freedom right under Cal. Const., art. I, § 1.1 implicated by an order destroying embryos, delaying their use, or imposing a spousal veto;

c. statutory "fundamental right to choose to bear a child" protections under Health & Safety Code § 123462 (and related provisions), including whether infertility care is within the protected decision-making sphere as applied here.

d. a state constitutional right to due process or equal protection from a "spousal veto" via embryo disposition directive or otherwise, as her decision to choose to bear a child via IVF treatment is opposed by her spouse.

3. Respondent's rights under federal law

Respondent requests findings on whether:

a. the Court recognizes any federal constitutional protection against state interference that would permanently foreclose Respondent's ability to attempt parenthood, including due process and equal protection;

b. the Court's order implicates Sofiya's federal due process and/or equal protection rights as Sofiya asserts her right to procreate, her right to control her lineage, her right to property, and her right to be free from a spousal veto that interferes with any of her other rights, be they state or federal in nature.

C. Standard of Review and the Court's Chosen Legal Framework

Respondent requests that the Court expressly state:

1. What legal framework governs this dispute or relevant portions of the Court's analysis: strict scrutiny, the compelling interest standard, any state balancing tests, what level of judicial review applies to a state constitutional claim under Art I., § 1.1.

2. If the Court rejects strict scrutiny or the "compelling interest/narrow tailoring" standard urged by Respondent:

a. the reasons for doing so;

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b. what lesser standard the Court applied and why it is the correct standard under California law for state interference with the specific reproductive-autonomy interest the Court found at issue.

D. Strict Scrutiny / Compelling Interest / Narrow Tailoring (If the Court Finds a Fundamental Right)

If the Court finds Respondent's constitutional rights implicated, Respondent requests findings on:

1. Whether Petitioner identified a compelling or legitimate or important governmental/state interest sufficient to justify an order that destroys the embryos, delays their use, or imposes a spousal veto.
2. Whether the Court found any asserted interest compelling, and the evidence supporting it.
3. Whether the remedy ordered is narrowly tailored and uses the least restrictive means to advance the stated interest, including why less restrictive alternatives were rejected, such as:

a. awarding Respondent exclusive control/possession and decision-making authority;

b. ordering a non-parentage or donor-style determination if legally available, pursuant to Family Code § 7613(e);

c. crafting protective orders addressing downstream concerns without destroying or freezing the embryos beyond Respondent's use.

E. Equal Protection: Spousal Veto and Sex-Linked Reproductive Choice

Respondent requests findings on:

1. Whether a mutual-consent requirement or spousal veto operates, as applied here, to empower one spouse to block the other spouse's sex-linked reproductive choice to bear a child or her right to reproductive freedom, right to reproductive autonomy, and/or right to privacy.
2. Whether the Court found any sex-based classification or sex-linked burden, and what level of scrutiny the Court applied (state and/or federal equal protection).
3. The Court's rationale for accepting or rejecting Respondent's equal protection argument.

F. Community Property Characterization and Equalization (If Embryos Are Destroyed or Placed Beyond Use)

Respondent requests findings on:

1. Whether the embryos constitute community property or are subject to a community-property interest for allocation/equitable relief purposes.

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2. If the Court orders destruction or otherwise places embryos beyond Respondent's use:

a. whether Respondent is entitled to an equalization payment or offset to account for loss of her community interest and the community expenditures incurred to create and preserve the embryos and the costs to undergo IVF and surrogacy in the future;

b. the factual basis and amount of any equalization determination, or the reasons for denying it.

G. Evidentiary Rulings: Admissibility, Authentication, and Prejudice of Late-Produced Exhibits (Exhibits 1–4 and Exhibit 6)

Respondent requests express findings on:

1. Whether Petitioner's Exhibits 1–4 (embryo-related documents) and Exhibit 6 (attorney invoices) were timely exchanged at least five court days before trial as required by LASC Local Rule 5.15(b), whether Petitioner showed "good cause" for untimely disclosure, and if not, what consequence the Court imposed (exclusion, limitation, continuance, or other remedy).

2. Whether Petitioner failed to produce Exhibits 1–4 and/or Exhibit 6 in response to discovery requests and/or pursuant to statutory disclosure obligations, and whether evidentiary/issue/monetary sanctions were warranted under CCP section 2023.030 (or other authority).

3. Authentication: Whether Petitioner met his burden to authenticate Exhibits 1–4 and Exhibit 6, including:

a. whether any competent witness with knowledge authenticated these documents;

b. whether any lack of testimony from the clinic/storage custodian affected admissibility;

c. whether the Court relied on any presumption, admission, or secondary evidence theory.

4. Whether the Court found Respondent suffered unfair surprise or prejudice from late production, and how the Court addressed it.

H. Due Process and Statutory Notice for Sanctions / Attorney's Fees

Respondent requests express findings on:

1. Whether Petitioner sought sanctions/fees at trial (including through Exhibit 6), and if so:

a. what notice Petitioner provided, when, and in what form (noticed motion, pleading request, oral request, or otherwise);

b. whether the notice satisfied state law and constitutional due process requirements.

2. Whether the Court awarded any sanctions/fees, and if so:

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a. what conduct supported the award;

b. what evidence supported ability to pay and reasonableness;

c. what findings the Court made regarding "notice and opportunity to be heard."

I. Contract / "Disposition Directive" Issues: Formation, Scope, Certainty, and Enforceability

Respondent requests findings sufficient to permit appellate review of whether any single, controlling, enforceable embryo-disposition contract exists and applies to the embryo at issue.

1. Threshold: Are Exhibits 1–4 "interspousal agreements" at all?

a. Identify the legal nature of each document: patient-provider consent form, storage contract, directive to clinic, interspousal contract, or some combination.

b. Identify the parties to each contract (e.g., spouses vs. clinic/lab/storage company), and whether any spouse-to-spouse enforceable promise was actually formed.

2. Identification and content of each purported "directive"

For each alleged directive (including Exhibit 1 dated 07/10/2021 and Exhibit 4 dated 02/08/2022), Respondent requests express findings on:

a. the precise disposition option(s) selected "in the event of divorce/dissolution/legal separation;"

b. whether the form required "check ONE only," and whether multiple boxes/initial lines were marked, creating internal inconsistency or ambiguity;

c. which embryos are covered by which disposition directive;

d. whether there is evidence that other undisclosed disposition directives exist that cover any of the at-issue embryos.

3. Contract certainty and ambiguity

Respondent requests findings on:

a. whether the alleged disposition provisions are sufficiently certain to be enforceable as between spouses, including identification of the embryo(s) to which they apply, how many embryos there are, and where they are located;

b. whether any ambiguity is patent and/or latent (including ambiguity created by multiple documents signed on different dates, inconsistent selections, or failure to identify embryos);

c. what extrinsic evidence (if any) the Court admitted and relied on to interpret any ambiguity.

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4. Multiple writings: integration, modification, supersession, and chronology

Respondent requests findings on:

a. whether multiple documents exist and conflict;

b. if the Court enforced a directive, which specific directive the Court found controlling and why (including a supersession/modification analysis);

c. whether the Court found any later document revoked or altered a prior directive, and the legal basis for that finding;

d. whether any document itself contains a procedure or "mechanism" for revocation/changes and whether Petitioner impeded access to that mechanism.

J. Interspousal Transactions / Presumption of Undue Influence (Family Code § 721)

If the Court admits and considers Exhibits 1–4 as operative against Respondent's interest, Respondent requests express findings on:

1. Whether any alleged disposition directive operated as an interspousal transaction benefiting Petitioner and disadvantaging Respondent (including any purported stripping of Respondent's control/interest in jointly created embryos or directing destruction over her objection).
2. Whether the Family Code § 721 presumption of undue influence applies.
3. If the presumption applies:

a. what standard of proof the Court required Petitioner to meet to rebut it (including whether clear and convincing evidence was required);

b. what facts the Court found showing Respondent acted freely and voluntarily with full knowledge of all facts and with complete understanding of the effect of the transaction;

c. whether Respondent had independent advice or meaningful opportunity to obtain it;

d. whether any signing circumstances (time pressure, medical context, reliance on Petitioner, Petitioner initialing/signing on Respondent's behalf, etc.) supported or undermined voluntariness.

II. REQUEST

Respondent respectfully requests that the Court issue a Statement of Decision that addresses the foregoing principal controverted issues and includes express findings.

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LAW OFFICE OF J.R.HOWELL

Respectfully submitted,

J.R. HOWELL,
LAW OFFICE OF J.R. HOWELL

Date: February 24, 2026

By: _____
J.R. Howell (State Bar No. 268086)

LAW OFFICE OF J.R.HOWELL

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION FIVE

Case No. B355195

MAX DAVID BORENSTEIN,

Respondent,

v.

SOFIYA ALEXANDRA GOLDSHTEYN,

Appellant.

Appeal from the Superior Court of California,
County of Los Angeles - Case No. 22STFL08826

Hon. Scott J. Nord, Judge

APPELLANT'S APPENDIX
VOLUME 4 OF 11
Pages 662-890

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EXHIBIT

A

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(530) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF ANNA MARIA BERECZKY-ANDERSON

I, Anna Maria Bereczky-Anderson, declare:

I am an attorney licensed to practice in California, State Bar No. 227794, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Senate Bill 1301 of 2002. Senate Bill 1301 was approved by the Legislature and was enacted as Chapter 385 of the Statutes of 2002.

The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Senate Bill 1301 of 2002. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

SENATE BILL 1301 OF 2002:

1. All versions of Senate Bill 1301 (Kuehl-2002);
2. Procedural history of Senate Bill 1301 from the 2001-02 *Senate Final History*;
3. Analysis of Senate Bill 1301 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 1301;

5. Third Reading analysis of Senate Bill 1301 prepared by the Office of Senate Floor Analyses;
6. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 1301;
7. Material from the legislative bill file of the Senate Republican Caucus - Office of Policy on Senate Bill 1301;
8. Material from the legislative bill file of the Senate Republican Caucus - Fiscal Office on Senate Bill 1301;
9. Analysis of Senate Bill 1301 prepared for the Assembly Committee on Judiciary;
10. Material from the legislative bill file of the Assembly Committee on Judiciary on Senate Bill 1301;
11. Analysis of Senate Bill 1301 prepared for the Assembly Committee on Health;
12. Material from the legislative bill file of the Assembly Committee on Health on Senate Bill 1301;
13. Analysis of Senate Bill 1301 prepared for the Assembly Committee on Appropriations;
14. Material from the legislative bill file of the Assembly Committee on Appropriations on Senate Bill 1301;
15. Third Reading analysis of Senate Bill 1301 prepared by the Assembly Committee on Judiciary;
16. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 1301;
17. Post-enrollment documents regarding Senate Bill 1301;
18. Press Release #095 issued by the Office of the Governor on September 5, 2002, to announce that Senate Bill 1301 had been signed;
19. Excerpt regarding Senate Bill 1301 from the *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, November 2002;
20. Excerpt regarding Senate Bill 1301 from the 2001-2002 *Bill Summary*, prepared by the Assembly Committee on Judiciary;
21. Material from the legislative bill file of the Department of Finance on Senate Bill 1301;
22. Article entitled "Abortion Debate echoes at Capitol," from the *Visalia Times-Delta*, January 22, 2002;
23. Article entitled "Bill would give nurses abortion-pill power," from the *Tulare Advance-Register*, January 22, 2002;
24. Article entitled "Bill would ease abortion-pill access," from *The Desert Sun*, January 22, 2002;

25. Article entitled "Senate OKs Letting Nurses Prescribe RU-486," from *The Los Angeles Times*, May 17, 2002;
26. Article entitled "Senate approves bill to let nurses prescribe RU-486 from *The Napa Valley Register*, May 19, 2002.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 16th day of August, 2024 at Woodland, California.

Anna Maria Bereczky-Anderson

ANNA MARIA BERECZKY-ANDERSON

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SENATE BILL No. 1301

Introduced by Senator Kuehl

January 18, 2002

An act to amend Section 2253 of the Business and Professions Code, to add Article 2.5 (commencing with Section 123460) to Chapter 2 of Part 2 of Division 106 of, and to repeal Sections 123400, 123405, 123407, 123410, 123415, and 123430 of, the Health and Safety Code, relating to reproductive privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, as introduced, Kuehl. Reproductive Privacy Act.

(1) Existing statutory law, the Therapeutic Abortion Act, contains various provisions regarding abortion, including a requirement that an abortion may only be performed by the holder of a physician's and surgeon's certificate, under specified conditions. The act also includes requirements that prior approval be obtained for each abortion by a committee of medical staff, with specified membership, who must determine either that continuation of the pregnancy would impair the physical or mental health of the mother, or that the pregnancy resulted from rape or incest. Existing law defines "mental health" for these purposes.

Certain provisions of the act, including, but not limited to, the above requirements relating to medical committee approval for abortions, and the statutory definition of mental health, have been held unconstitutional by the courts.

This bill would delete the above provisions of the Therapeutic Abortion Act, among others, including the name of the act. The bill would enact the Reproductive Privacy Act, which would provide that every individual possesses a fundamental right of privacy with respect to reproductive decisions, including (A) the fundamental right to

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

choose or refuse birth control, and (B) the fundamental right to choose to bear a child or obtain an abortion.

This bill would provide that the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or obtain an abortion prior to viability of the fetus, as defined, or when necessary to preserve her life or health. The bill would specify the circumstances under which the performance of an abortion is deemed unauthorized.

(2) Under existing law, the procuring or aiding, abetting, attempting, agreeing, or offering to procure an unauthorized abortion constitutes unprofessional conduct of a licensee under the Medical Practice Act, absent compliance with the Therapeutic Abortion Act.

This bill would instead deem it unprofessional conduct to fail to comply with the Reproductive Privacy Act in connection with the above activities.

(3) Under existing law, a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or other certificate that authorizes him or her to perform or assist in performing a surgical abortion.

This bill would instead provide that a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or if he or she assists in performing a surgical abortion without a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion. This bill would also create a state-mandated local program by extending criminal liability to a person who performs or assists in performing a nonsurgical abortion without the appropriate licensing or certification.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

The people of the State of California do enact as follows:

SECTION 1. Section 2253 of the Business and Professions Code is amended to read:

2253. (a) ~~The~~ *Failure to comply with the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code) in performing, assisting,* procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion constitutes unprofessional conduct~~, unless the act is done in compliance with the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code)~~.

(b) *(1)* A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a surgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or ~~does not have a~~ *if he or she assists in performing a surgical abortion and does not have a valid, unrevoked, and unsuspended license or* certificate obtained in accordance with some other provision of law that authorizes him or her to perform ~~or~~ *the functions necessary to* assist in performing a surgical abortion.

(2) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a nonsurgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or does not have a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform or assist in performing the functions necessary for a nonsurgical abortion.

SEC. 2. Section 123400 of the Health and Safety Code is repealed.

~~123400. This article shall be known and may be cited as the Therapeutic Abortion Act.~~

SEC. 3. Section 123405 of the Health and Safety Code is repealed.

~~123405. A holder of the physician's and surgeon's certificate, as defined in the Business and Professions Code, is authorized to~~

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~~perform an abortion or aid or assist or attempt an abortion, only if each of the following requirements is met:~~

~~(a) The abortion takes place in a hospital that is accredited by the Joint Commission on Accreditation of Hospitals.~~

~~(b) The abortion is approved in advance by a committee of the medical staff of the hospital, which committee is established and maintained in accordance with standards promulgated by the Joint Commission on Accreditation of Hospitals. In any case in which the committee of the medical staff consists of no more than three licensed physicians and surgeons, the unanimous consent of all committee members shall be required in order to approve the abortion.~~

~~(c) The Committee of the Medical Staff finds that one or more of the following conditions exist:~~

~~(1) There is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother.~~

~~(2) The pregnancy resulted from rape or incest.~~

SEC. 4. Section 123407 of the Health and Safety Code is repealed.

~~123407. The Committee of the Medical Staff shall not approve the performance of an abortion on the ground that the pregnancy resulted from rape or incest except in accordance with the following procedure:~~

~~(a) Upon receipt of an application for an abortion on the grounds that the pregnancy resulted from rape or incest, the committee shall immediately notify the district attorney of the county in which the alleged rape or incest occurred of the application, and transmit to the district attorney the affidavit of the applicant attesting to the facts establishing the alleged rape or incest. If the district attorney informs the committee that there is probable cause to believe that the pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code, the committee may approve the abortion. If, within five days after the committee has notified the district attorney of the application, the committee does not receive a reply from the district attorney, it may approve the abortion. If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the committee shall not approve the abortion, except as provided in subdivision (b) of this section.~~

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~~(b) If the district attorney informs the committee that there is no probable cause to believe the alleged violation did occur, the person who applied for the abortion may petition the superior court of the county in that the alleged rape or incest occurred, to determine whether the pregnancy resulted from a violation of Section 261 or Section 285 of the Penal Code. Hearing on the petition shall be set for a date no later than one week after the date of filing of the petition.~~

~~The district attorney shall file an affidavit with the court stating the reasons for his or her conclusion that the alleged violation did not occur, and this affidavit shall be received in evidence. The district attorney may appear at the hearing to offer further evidence or to examine witnesses.~~

~~If the court finds that it has been proved, by a preponderance of the evidence, that the pregnancy did result from a violation of Section 261 or Section 285 of the Penal Code, it shall issue an order so declaring, and the committee may approve the abortion. Any hearing granted under this section may, at the court's discretion, be held in camera. The testimony, findings, conclusions or determinations of the court in a proceeding under this section shall be inadmissible as evidence in any other action or proceeding, although nothing herein shall be construed to prevent the appearance of any witness who testified at a proceeding under this section, or to prevent the introduction of any evidence that may have been introduced at a proceeding under this section, in any other action or proceeding.~~

~~(c) Notwithstanding any other provision of this section, an abortion shall be approved on the ground of a violation of subdivision (1) of Section 261 of the Penal Code only when the woman at the time of the alleged violation, was below the age of 15 years.~~

~~(d) Notwithstanding any other provision of this section, the testimony of any witness in a proceeding under this section shall be admissible as evidence in any prosecution of that witness for perjury.~~

SEC. 5. Section 123410 of the Health and Safety Code is repealed.

~~123410. The committee of the medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination~~

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~~of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. In no event shall the termination be approved after the 20th week of pregnancy.~~

SEC. 6. Section 123415 of the Health and Safety Code is repealed.

~~123415. The term "mental health" as used in Section 123405 means mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint.~~

SEC. 7. Section 123430 of the Health and Safety Code is repealed.

~~123430. The department shall by regulation establish and maintain a system for the reporting of therapeutic abortions so as to determine the demographic effects of abortion and assess the experience in relation to legal and medical standards pertaining to abortion practices. The reporting system shall not require, permit, or include the identification by name or other means of any person undergoing an abortion. The department shall make a report to the Legislature not later than the 30th calendar day each even-numbered year on its findings related to therapeutic abortions and their effects.~~

~~The department shall seek, in addition to any other funds made available to it, federal funds in order to carry out the purposes of this article.~~

SEC. 8. Article 2.5 (commencing with Section 123460) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 2.5. Reproductive Privacy Act

123460. This article shall be known and may be cited as the Reproductive Privacy Act.

123462. The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the state of California that:

(a) Every individual has the fundamental right to choose or refuse birth control.

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(b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.

(c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article.

123464. The following definitions shall apply for purposes of this chapter:

(a) ''Abortion'' means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(b) ''Pregnancy'' means the human reproductive process, beginning with the implantation of an embryo.

(c) ''State'' means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.

(d) ''Viability'' means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

123466. The state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman.

123468. The performance of an abortion is unauthorized if either of the following is true:

(a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code.

(b) The abortion is performed on a viable fetus, and both of the following are established:

(1) In the good faith medical judgment of the physician, the fetus was viable.

(2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

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the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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AMENDED IN SENATE APRIL 8, 2002

SENATE BILL No. 1301

Introduced by Senator Kuehl
(Principal coauthor: Senator Burton)
(Principal coauthors: Assembly Members Jackson and Wesson)
(Coauthors: Senators Alpert, Chesbro, Escutia, Figueroa, Karnette, Ortiz, Perata, Romero, Speier, and Torlakson)
(Coauthors: Assembly Members Alquist, Aroner, Canciamilla, Cedillo, Chan, Chu, Cohn, Corbett, Diaz, Firebaugh, Frommer, Goldberg, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Matthews, Nakano, Nation, Negrete McLeod, Oropeza, Pavley, Richman, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Vargas, Wayne, and Wiggins)

January 18, 2002

An act to amend Section 2253 of the Business and Professions Code, to add Article 2.5 (commencing with Section 123460) to Chapter 2 of Part 2 of Division 106 of, and to repeal Sections 123400, 123405, 123407, 123410, 123415, and 123430 of, the Health and Safety Code, relating to reproductive privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, as amended, Kuehl. Reproductive Privacy Act.

(1) Existing statutory law, the Therapeutic Abortion Act, contains various provisions regarding abortion, including a requirement that an abortion may only be performed by the holder of a physician's and surgeon's certificate, under specified conditions. The act also includes requirements that prior approval be obtained for each abortion by a committee of medical staff, with specified membership, who must determine either that continuation of the pregnancy would impair the

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physical or mental health of the mother, or that the pregnancy resulted from rape or incest. Existing law defines "mental health" for these purposes.

Certain provisions of the act, including, but not limited to, the above requirements relating to medical committee approval for abortions, and the statutory definition of mental health, have been held unconstitutional by the courts.

This bill would delete the above provisions of the Therapeutic Abortion Act, among others, including the name of the act. The bill would enact the Reproductive Privacy Act, which would provide that every individual possesses a fundamental right of privacy with respect to reproductive decisions, including (A) the fundamental right to choose or refuse birth control, and (B) the fundamental right to choose to bear a child or obtain an abortion.

This bill would provide that the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or obtain an abortion prior to viability of the fetus, as defined, or when necessary to ~~preserve~~ *protect* her life or health. The bill would specify the circumstances under which the performance of an abortion is deemed unauthorized.

(2) Under existing law, the procuring or aiding, abetting, attempting, agreeing, or offering to procure an unauthorized abortion constitutes unprofessional conduct of a licensee under the Medical Practice Act, absent compliance with the Therapeutic Abortion Act.

This bill would instead deem it unprofessional conduct to fail to comply with the Reproductive Privacy Act in connection with the above activities.

(3) Under existing law, a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or other certificate that authorizes him or her to perform or assist in performing a surgical abortion.

This bill would instead provide that a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or if he or she assists in performing a surgical abortion without a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her

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to perform the functions necessary to assist in performing a surgical abortion. This bill would also create a state-mandated local program by extending criminal liability to a person who performs or assists in performing a nonsurgical abortion without the appropriate licensing or certification.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2253 of the Business and Professions
2 Code is amended to read:
3 2253. (a) Failure to comply with the Reproductive Privacy
4 Act (Article 2.5 (commencing with Section 123460) of Chapter 2
5 of Part 2 of Division 106 of the Health and Safety Code) in
6 performing, assisting, procuring or aiding, abetting, attempting,
7 agreeing, or offering to procure an illegal abortion constitutes
8 unprofessional conduct.
9 (b) (1) A person is subject to Sections 2052 and 2053 if he or
10 she performs or assists in performing a surgical abortion, and at the
11 time of so doing, does not have a valid, unrevoked, and
12 unsuspended license to practice as a physician and surgeon as
13 provided in this chapter, or if he or she assists in performing a
14 surgical abortion and does not have a valid, unrevoked, and
15 unsuspended license or certificate obtained in accordance with
16 some other provision of law that authorizes him or her to perform
17 the functions necessary to assist in performing a surgical abortion.
18 (2) A person is subject to Sections 2052 and 2053 if he or she
19 performs or assists in performing a nonsurgical abortion, and at the
20 time of so doing, does not have a valid, unrevoked, and
21 unsuspended license to practice as a physician and surgeon as
22 provided in this chapter, or does not have a valid, unrevoked, and
23 unsuspended license or certificate obtained in accordance with
24 some other provision of law that authorizes him or her to perform

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or assist in performing the functions necessary for a nonsurgical abortion.

(c) For purposes of this section, "nonsurgical abortion" includes termination of pregnancy through the use of pharmacological agents.

SEC. 2. Section 123400 of the Health and Safety Code is repealed.

SEC. 3. Section 123405 of the Health and Safety Code is repealed.

SEC. 4. Section 123407 of the Health and Safety Code is repealed.

SEC. 5. Section 123410 of the Health and Safety Code is repealed.

SEC. 6. Section 123415 of the Health and Safety Code is repealed.

SEC. 7. Section 123430 of the Health and Safety Code is repealed.

SEC. 8. Article 2.5 (commencing with Section 123460) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

Article 2.5. Reproductive Privacy Act

123460. This article shall be known and may be cited as the Reproductive Privacy Act.

123462. The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:

(a) Every individual has the fundamental right to choose or refuse birth control.

(b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.

(c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose ~~and~~ *to* obtain an abortion, except as specifically permitted by this article.

123464. The following definitions shall apply for purposes of this chapter:

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(a) ''Abortion'' means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(b) ''Pregnancy'' means the human reproductive process, beginning with the implantation of an embryo.

(c) ''State'' means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.

(d) ''Viability'' means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

123466. The state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to ~~preserve~~ *protect* the life or health of the woman.

123468. The performance of an abortion is unauthorized if either of the following is true:

(a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code.

(b) The abortion is performed on a viable fetus, and both of the following are established:

(1) In the good faith medical judgment of the physician, the fetus was viable.

(2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

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the meaning of Section 6 of Article XIII B of the California Constitution.

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Senate Bill No. 1301

CHAPTER 385

An act to amend Section 2253 of the Business and Professions Code, to add Article 2.5 (commencing with Section 123460) to Chapter 2 of Part 2 of Division 106 of, and to repeal Sections 123400, 123405, 123407, 123410, 123415, and 123430 of, the Health and Safety Code, relating to reproductive privacy.

[Approved by Governor September 5, 2002. Filed with Secretary of State September 6, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1301, Kuehl. Reproductive Privacy Act.

(1) Existing statutory law, the Therapeutic Abortion Act, contains various provisions regarding abortion, including a requirement that an abortion may only be performed by the holder of a physician's and surgeon's certificate, under specified conditions. The act also includes requirements that prior approval be obtained for each abortion by a committee of medical staff, with specified membership, who must determine either that continuation of the pregnancy would impair the physical or mental health of the mother, or that the pregnancy resulted from rape or incest. Existing law defines ''mental health'' for these purposes.

Certain provisions of the act, including, but not limited to, the above requirements relating to medical committee approval for abortions, and the statutory definition of mental health, have been held unconstitutional by the courts.

This bill would delete the above provisions of the Therapeutic Abortion Act, among others, including the name of the act. The bill would enact the Reproductive Privacy Act, which would provide that every individual possesses a fundamental right of privacy with respect to reproductive decisions, including (A) the fundamental right to choose or refuse birth control, and (B) the fundamental right to choose to bear a child or obtain an abortion.

This bill would provide that the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or obtain an abortion prior to viability of the fetus, as defined, or when necessary to protect her life or health. The bill would specify the circumstances under which the performance of an abortion is deemed unauthorized.

(2) Under existing law, the procuring or aiding, abetting, attempting, agreeing, or offering to procure an unauthorized abortion constitutes

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unprofessional conduct of a licensee under the Medical Practice Act, absent compliance with the Therapeutic Abortion Act.

This bill would instead deem it unprofessional conduct to fail to comply with the Reproductive Privacy Act in connection with the above activities.

(3) Under existing law, a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or other certificate that authorizes him or her to perform or assist in performing a surgical abortion.

This bill would instead provide that a person is criminally liable, and subject to possible imprisonment, if he or she performs or assists in performing a surgical abortion if he or she does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon, or if he or she assists in performing a surgical abortion without a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion. This bill would also create a state-mandated local program by extending criminal liability to a person who performs or assists in performing a nonsurgical abortion without the appropriate licensing or certification.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 2253 of the Business and Professions Code is amended to read:

2253. (a) Failure to comply with the Reproductive Privacy Act (Article 2.5 (commencing with Section 123460) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code) in performing, assisting, procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion constitutes unprofessional conduct.

(b) (1) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a surgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or if he

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or she assists in performing a surgical abortion and does not have a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform the functions necessary to assist in performing a surgical abortion.

(2) A person is subject to Sections 2052 and 2053 if he or she performs or assists in performing a nonsurgical abortion, and at the time of so doing, does not have a valid, unrevoked, and unsuspended license to practice as a physician and surgeon as provided in this chapter, or does not have a valid, unrevoked, and unsuspended license or certificate obtained in accordance with some other provision of law that authorizes him or her to perform or assist in performing the functions necessary for a nonsurgical abortion.

(c) For purposes of this section, ''nonsurgical abortion'' includes termination of pregnancy through the use of pharmacological agents.

SEC. 2. Section 123400 of the Health and Safety Code is repealed.

SEC. 3. Section 123405 of the Health and Safety Code is repealed.

SEC. 4. Section 123407 of the Health and Safety Code is repealed.

SEC. 5. Section 123410 of the Health and Safety Code is repealed.

SEC. 6. Section 123415 of the Health and Safety Code is repealed.

SEC. 7. Section 123430 of the Health and Safety Code is repealed.

SEC. 8. Article 2.5 (commencing with Section 123460) is added to Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, to read:

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123460. This article shall be known and may be cited as the Reproductive Privacy Act.

123462. The Legislature finds and declares that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions. Accordingly, it is the public policy of the State of California that:

(a) Every individual has the fundamental right to choose or refuse birth control.

(b) Every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article.

(c) The state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose to obtain an abortion, except as specifically permitted by this article.

123464. The following definitions shall apply for purposes of this chapter:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

(a) ''Abortion'' means any medical treatment intended to induce the termination of a pregnancy except for the purpose of producing a live birth.

(b) ''Pregnancy'' means the human reproductive process, beginning with the implantation of an embryo.

(c) ''State'' means the State of California, and every county, city, town and municipal corporation, and quasi-municipal corporation in the state.

(d) ''Viability'' means the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures.

123466. The state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to protect the life or health of the woman.

123468. The performance of an abortion is unauthorized if either of the following is true:

(a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code.

(b) The abortion is performed on a viable fetus, and both of the following are established:

(1) In the good faith medical judgment of the physician, the fetus was viable.

(2) In the good faith medical judgment of the physician, continuation of the pregnancy posed no risk to life or health of the pregnant woman.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

VOLUME 1

CALIFORNIA LEGISLATURE

AT SACRAMENTO

2001–02 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTIONS TAKEN IN THIS SESSION ON ALL SENATE BILLS
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT,
AND SENATE RESOLUTIONS

CONVENED DECEMBER 4, 2000
ADJOURNED SINE DIE NOVEMBER 30, 2002

DAYS IN SESSION 262

CALENDAR DAYS 727

LIEUTENANT GOVERNOR
President of the Senate

SENATOR JOHN L. BURTON
President pro Tempore

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

S.B. No. 1301—Kuehl (Principal coauthor: Senator Burton) (Principal coauthors: Assembly Members Jackson and Wesson) (Coauthors: Senators Alpert, Chesbro, Escutia, Figueroa, Karnette, Ortiz, Perata, Romero, Speier, and Torlakson) (Coauthors: Assembly Members Alquist, Aroner, Canciamilla, Cedillo, Chan, Chu, Cohn, Corbett, Diaz, Firebaugh, Frommer, Goldberg, Keeley, Kehoe, Koretz, Liu, Longville, Lowenthal, Matthews, Nakano, Nation, Negrete McLeod, Oropeza, Pavley, Richman, Salinas, Shelley, Simitian, Steinberg, Strom-Martin, Vargas, Wayne, and Wiggins).

An act to amend Section 2253 of the Business and Professions Code, to add Article 2.5 (commencing with Section 123460) to Chapter 2 of Part 2 of Division 106 of, and to repeal Sections 123400, 123405, 123407, 123410, 123415, and 123430 of, the Health and Safety Code, relating to reproductive privacy.

2002

Jan. 18—From print. May be acted upon on or after February 17.
Jan. 18—Introduced. Read first time. To Com. on RLS. for assignment. To print.
Jan. 31—To Com. on JUD.
Mar. 21—Set for hearing April 9.
April 8—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
April 10—From committee: Do pass, but first be re-referred to Com. on RLS. (Ayes 4. Noes 2. Page 3739.) Re-referred to Com. on RLS.
April 22—Withdrawn from committee. Re-referred to Com. on APPR.
April 24—Set for hearing May 6.
May 6—From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
May 7—Read second time. To third reading.
May 16—Read third time. Amendments by Senator Haynes tabled on motion of Senator Polanco. (Ayes 22. Noes 12. Page 4249.) Passed. (Ayes 22. Noes 12. Page 4249.) To Assembly.
May 16—In Assembly. Read first time. Held at Desk.
May 30—To Coms. on JUD. and HEALTH.
June 11—From committee: Do pass, but first be re-referred to Com. on HEALTH. (Ayes 8. Noes 2.) Re-referred to Com. on HEALTH.
June 26—From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 13. Noes 6.) Re-referred to Com. on APPR.
Aug. 8—From committee: Do pass. (Ayes 17. Noes 4.)
Aug. 12—Read second time. To third reading.
Aug. 19—Read third time. Amendments by Assembly Member Leslie tabled on motion of Assembly Member Firebaugh. (Ayes 47. Noes 26. Page 7748.) Passed. (Ayes 50. Noes 25. Page 7748.) To Senate.
Aug. 19—In Senate. To enrollment.
Aug. 22—Enrolled. To Governor at 9:15 a.m.
Sept. 5—Approved by Governor.
Sept. 6—Chaptered by Secretary of State. Chapter 385, Statutes of 2002.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
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SUBJECT

Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains. In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.

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This bill would delete the invalid provisions of the Therapeutic Abortion Act and certain other provisions as well, including the name of the act, and would enact in their place the Reproductive Privacy Act, as specified below.

This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

1. Existing statutory law, the Therapeutic Abortion Act, authorizes a holder of a physician's and surgeon's certificate to perform an abortion only if it takes place in an accredited hospital, and is approved by a committee that finds that (1) there is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother, and/or (2) the pregnancy resulted from rape or incest. [Secs. 123400, 123405, 123415.]

   Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee). [Sec. 123407.]

   Existing law further provides that if the district attorney informs the committee that there is no probable cause to believe the pregnancy resulted from rape or incest, the applicant for the abortion may petition the superior court for a hearing. If the court determines by a preponderance of evidence that the pregnancy resulted from rape or incest, it shall issue an order to this effect, and the committee shall approve the abortion. [Id.]

   Existing case law has declared unconstitutional these sections' medical criteria and approval processes for obtaining an abortion. *Planned Parenthood v. Ashcroft* (1983) 462 U.S. 476; *Akron v. Akron Center for Reproductive Health* (1983) 462 U.S. 416; *Roe v. Wade* (1973) 410 U.S. 179; *People v. Barksdale* (1972) 8 Cal. 3d 320.

   This bill would delete these sections and enact the Reproductive Privacy Act, which would provide that "it is the public policy of the state of California that (a) every individual has the fundamental right to choose or refuse birth control; (b) every woman has the fundamental right to choose to bear a child or to choose and to obtain an abortion, except as specifically limited by this article; and (c) the state shall not deny or interfere with a woman's fundamental right to choose to bear a child or to choose and obtain an abortion, except as specifically permitted by this article."

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2. Existing statutory law provides that the committee of medical staff referred to in Section 123405 must, in all instances, consist of not less than two licensed physicians and surgeons, and if the proposed termination of pregnancy will occur after the 13th week of pregnancy, the committee must consist of at least three such licensed physicians and surgeons. [Sec. 123410.]

   Existing law further provides that in no event shall termination of a pregnancy be approved after the 20th week of pregnancy. [Id.]

   Existing case law has invalidated this section's requirement that an abortion must be approved by a medical committee. *People v. Barksdale, supra,* 8 Cal. 3d. at 328. Questions remain as to its validity regarding prohibition on abortions after the 20th week of pregnancy. 65 Ops. Atty. Gen. 261; *Feminist Women's Health Center v. Philobosian* (1984) 157 Cal. App. 3d 1076, 1084 n.3.

   This bill would repeal Section 123410, and instead would provide that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

   This bill further would provide that the performance of an abortion is unauthorized if either of the following is true:

   (a) The person performing or assisting in the abortion is not a health care provider authorized to perform or assist in an abortion pursuant to Section 2253 of the Business and Professions Code; **or**

   (b) The abortion is performed on a viable fetus, and in the good faith medical judgment of the physician, the fetus was viable and continuation of the pregnancy posed no risk to the life or health of the pregnant woman.

   This bill would define various terms, including (1) pregnancy, defined as "the human reproductive process, beginning with the implantation of an embryo," and (2) viability, defined as "the point in a pregnancy when, in the good faith medical judgment of a physician, on the particular facts of the case before that physician, there is a reasonable likelihood of the fetus's sustained survival outside the uterus without the application of extraordinary medical measures."

3. Existing law provides that the Department of Health Services shall establish a system for the reporting of abortions to determine their demographic effects, and to assess legal and medical standards pertaining to abortion practices, and shall report its findings to the Legislature every two years. [Sec. 123430.]

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This bill would delete this provision.

4. Existing law provides that the performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct, unless done in compliance with the Therapeutic Abortion Act. [Bus. & Profs. Code Sec. 2253.]

   Existing law further provides that a person is subject to criminal penalties for the unlicensed practice of medicine if he or she performs or assists at a surgical abortion and does not have a valid physician's and surgeon's license, or a certificate obtained under another law authorizing him or her to perform or assist at a surgical abortion. [Id.]

   This bill would delete the reference to the Therapeutic Abortion Act, and instead would provide that failure to comply with the Reproductive Privacy Act in performing, procuring, aiding, or offering to procure an illegal abortion constitutes unprofessional conduct.

   This bill further would provide that a person is subject to criminal penalties (1) if he or she **assists at a surgical abortion** and does not have a valid **license** or certificate obtained under a law authorizing him or her to perform **the functions necessary to** assist at a surgical abortion; or (2) if he or she performs or assists at a **nonsurgical** abortion without a valid license to practice as a physician or surgeon, or a valid license or certificate obtained under another law authorizing him or her to perform or assist in the functions necessary for a **nonsurgical** abortion.

   This bill further would provide that for the purposes of this section, "nonsurgical abortion includes termination of pregnancy through the use of pharmacologic agents."

COMMENT

1. Stated need for legislation

According to the author, many of the California statutes governing abortion have been rendered obsolete by federal and state Supreme Court decisions, but remain on the books because they have never been repealed or modified in accordance with case law. The end result "is a cryptic, often inconsistent abortion code that is laden with constitutional problems."

These outdated statutes also single out abortions for unnecessary regulation that doesn't apply to more complex procedures, and fail to address and accommodate advances in medical practice, such as early abortion methods like mifepristone (RU-486).

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This bill would delete provisions found unconstitutional in state or federal courts, would eliminate barriers to the use of early, nonsurgical abortion methods, and would affirmatively protect the right to a safe and legal abortion in California. The author concludes,

> We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning *Roe v. Wade*. Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns *Roe*.

2. Supporters express concerns about erosion of rights

The California Commission on the Status of Women supports SB 1301 as "a contemporary law" to govern abortion in California, adding, "this measure is necessary to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law."

Other supporters point to the continued efforts of some groups to repeal abortion rights as a reason to strengthen California's protection of those rights. The California Women's Law Center notes that "a woman's right to choose has been under constant attack since the U.S. Supreme Court decided *Roe v. Wade*," and calls SB 1301 "a crucial piece of legislation" to codify the "hard fought gains for women and girls" achieved through *Roe* and other decisions.

The Grey Panthers of California express similar views in support of the bill:

> [W]e are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. . . . Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals [who can perform and assist in] surgical and nonsurgical abortions. . . . We strongly support the *Roe v. Wade* decision and stand firm against any threat to the rights that decision permitted.

3. Medical groups support SB 1301 as protecting access to legal health care

The American College of Obstetricians and Gynecologists, California chapter, asserts that "the termination of a pregnancy before viability is a medical matter between a woman and her physician." The ACOG supports "the availability of all reproductive options" and opposes "unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act being repealed by this measure."

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The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of *Roe v. Wade*

Opponents concede that the bill would bring California abortion law into conformance with *Roe v. Wade*, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "*Roe v. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such

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thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act - those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother – impermissibly vague and therefore unconstitutional. *People v. Barksdale, supra,* 8 Cal. 3d at 333. Other provisions facilitating these statutes - those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act - were declared invalid as well. *Id.* at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe v. Wade, supra,* 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade. Committee to Defend Reproductive Rights v. Myers* (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

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(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. <u>This bill's provisions are consistent with judicially established parameters for the regulation of abortion</u>

Under the parameters established in *Roe v. Wade*, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. *Id.* at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with *Roe v. Wade*, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

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Support: *Civil rights organizations:* American Civil Liberties Union (ACLU); People for the American Way. *Health care organizations:* American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. *Legal organizations:* California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. *Political organizations:* Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. *Pro-choice organizations:* California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. *Women's organizations:* American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. *Other:* JWCH Institute, Inc.

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

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2001-2002 COMPLETE BILL HISTORY

BILL NUMBER : S.B. No. 1301
AUTHOR : Kuehl
TOPIC : Reproductive Privacy Act.
TYPE OF BILL :

INACTIVE BILL
NON-APPROPRIATION
STATE-MANDATED LOCAL PROGRAM
NON-TAX-LEVY
NON-URGENCY
MAJORITY VOTE
FISCAL

BILL HISTORY
2002

Sept. 6	Chaptered by Secretary of State. Chapter 385, Statutes of 2002.
Sept. 5	Approved by Governor.
Aug. 22	Enrolled. To Governor at 9:15 a.m.
Aug. 19	In Senate. To enrollment.
Aug. 19	Read third time Amendments by Assembly Member Leslie tabled on motion of Assembly Member Firebaugh. (Ayes 47. Noes 26. Page 7748.) Passed. (Ayes 50. Noes 25. Page 7748.) To Senate.
Aug. 12	Read second time. To third reading.
Aug. 8	From committee: Do pass. (Ayes 17. Noes 4.)
June 26	From committee: Do pass, but first be re-referred to Com. on APPR. (Ayes 13. Noes 6.) Re-referred to Com. on APPR.
June 11	From committee: Do pass, but first be re-referred to Com. on HEALTH. (Ayes 8. Noes 2.) Re-referred to Com. on HEALTH
May 30	To Coms. on JUD. and HEALTH
May 16	In Assembly. Read first time. Held at Desk.
May 16	Read third time. Amendments by Senator Haynes tabled on motion of Senator Polanco. (Ayes 22. Noes 12. Page 4249.) Passed. (Ayes 22. Noes 12. Page 4249.) To Assembly.
May 7	Read second time. To third reading.
May 6	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
Apr. 24	Set for hearing May 6.
Apr. 22	Withdrawn from committee. Re-referred to Com. on APPR.
Apr. 10	From committee: Do pass, but first be re-referred to Com. on RLS. (Ayes 4. Noes 2. Page 3739.) Re-referred to Com. on RLS.
Apr. 8	From committee with author's amendments. Read second time. Amended. Re-referred to committee.
Mar. 21	Set for hearing April 9.
Jan. 31	To Com. on JUD.
Jan. 18	Introduced. Read first time. To Com. on RLS. for assignment. To print.
Jan. 18	From print. May be acted upon on or after February 17.

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SENATE JUDICIARY COMMITTEE
Martha M. Escutia, Chair
2001-2002 Regular Session

SB 1301	S
Senator Kuehl	B
As Amended April 8, 2002	
Hearing Date: April 9, 2002	1
Health and Safety Code	3
CJW:sr	0
	1

SUBJECT

Reproductive Privacy Act

DESCRIPTION

This bill would delete various statutory provisions regarding abortion and would enact in their place the Reproductive Privacy Act. The Act would provide, among other things, that (1) every individual possesses a fundamental right of privacy with respect to reproductive decisions; and (2) the state shall not deny or interfere with a woman's right to choose an abortion prior to viability of the fetus, as defined in the Act.

BACKGROUND

Existing law, the Therapeutic Abortion Act, was signed into law by former Governor Ronald Reagan and took effect in 1967. The Act provided for women's access to abortion services, but spelled out various conditions that had to be met before a woman could obtain an abortion. [See Health and Safety Code Secs. 123400-123450. All further code references are to the Health and Safety Code unless otherwise stated.]

In the 1970's, a number of sections were added to the Therapeutic Abortion Act, primarily dealing with "conscience clause" issues and treatment of fetal remains. In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of state and federal court decisions have rendered various provisions of the Therapeutic Abortion Act wholly or partly invalid, and have left the validity of other provisions open to question. These provisions remain unchanged in the Health and Safety Code, however, because the Legislature has never repealed or modified them in accordance with, or in response to, these court decisions.

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This bill also would permit an appropriately licensed person who is not a physician to assist in an abortion.

CHANGES TO EXISTING LAW

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   Existing law further provides that the committee shall not approve an abortion on the ground that the pregnancy resulted from rape or incest unless the district attorney, upon review of an affidavit from the applicant for the abortion, notifies the committee that probable cause exists to believe the pregnancy resulted from rape or incest (or if the district attorney fails to respond to the committee). [Sec. 123407.]

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The California Family Health Council writes, "SB 1301 protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services."

The California District of the American Academy of Pediatrics notes that personal differences of opinion about abortion should not limit women's access to legal medical procedures:

> Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself).

The writer concludes,

> Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked.

4. Opponents object to codification of *Roe v. Wade*

Opponents concede that the bill would bring California abortion law into conformance with *Roe v. Wade*, but assert that the bill "prematurely" anticipates a reversal of that Supreme Court decision. Further, opponents note that "*Roe v. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People."

The Committee on Moral Concerns (CMC) opposes the bill for several reasons. First, it asserts that the bill's declaration of an individual's fundamental right of privacy conflicts with a right to abortion, which invades the privacy of the aborted fetus. Second, the CMC disputes the bill's definition of pregnancy ("the human reproductive process, beginning with the implantation of an embryo") as "politically convenient, but ungrounded in scientific reality."

The CMC further argues that the bill's apparent restrictions on abortion of a viable fetus are meaningless, since they apply only where a physician determines that continuing the pregnancy would pose "no risk to the life or health of the pregnant woman." The CMC asserts, "since there is no such

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thing as an absolutely risk-free childbirth, there is no such thing as an illegal abortion, as long as the abortionist is licensed."

5. Several current abortion statutes are invalid and appropriate for repeal

In 1972, the California Supreme Court declared several provisions of the Therapeutic Abortion Act - those requiring prior approval by a medical committee, and limiting approval to cases of rape, incest, or where the pregnancy threatened to "gravely impair" the physical or mental health of the mother – impermissibly vague and therefore unconstitutional. *People v. Barksdale, supra,* 8 Cal. 3d at 333. Other provisions facilitating these statutes - those requiring the input of the district attorney, establishing the proper formation of the medical committee, and defining "mental illness" for the purposes of the Act - were declared invalid as well. *Id.* at 334.

The following year, the U.S. Supreme Court declared that a right of personal privacy exists under the Constitution, and that this right "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." *Roe v. Wade, supra,* 410 U.S. at 153. An explicit right to privacy added to the California Constitution in 1972 provided state protection to procreative choice that is "at least as broad" as the federal protection set forth in *Roe v. Wade. Committee to Defend Reproductive Rights v. Myers* (1981), 29 Cal. 3d 252, at 280.

In 1997, the California Supreme Court invalidated a statute requiring a minor to obtain parental consent before obtaining an abortion. *American Academy of Pediatrics v. Lungren* (1997) 16 Cal. 4th 307, 314.

Thus, this bill's proposed repeal of the above-referenced provisions is consistent with current law.

6. The bill would not repeal or otherwise affect most other provisions of the Act

In addition to the provisions found unconstitutional, as described above, this bill would repeal two other provisions of the Therapeutic Abortion Act: Section 123400, which gives the Act its name, and Section 123430, which requires the DHS to collect abortion statistics for demographic purposes and report them to the Legislature.

The remaining provisions of the Act are not addressed or affected by this bill, and would remain in force if this bill is enacted. Those provisions are:

(1) the "conscience clause" provisions, which protect health care professionals who decline to perform or assist in abortions from any discipline, penalty, lawsuit, or employment opportunity as a result of their refusal [Section 123420];

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(2) a provision prohibiting an individual's refusal to consent to abortion or sterilization from being grounds for loss of any privileges or denial of public benefits [Section 123425];

(3) a provision establishing that an infant prematurely born alive in the course of an abortion has the same right to medical treatment as other infants [Section 123435]; and

(4) the provisions governing research and study of fetal remains [Sections 123440 and 123445].

7. <u>This bill's provisions are consistent with judicially established parameters for the regulation of abortion</u>

Under the parameters established in *Roe v. Wade*, the right of personal privacy outweighs any legitimate state interest in a woman's pregnancy until the end of the first trimester of that pregnancy. 410 U.S. at 164. After the first trimester, a state may regulate abortion in ways "reasonably related" to protecting maternal health, and at the point the fetus becomes viable, the state may regulate and/or prohibit abortions in the interest of protecting the "potentiality of human life" of the viable fetus, except where abortion is necessary to preserve the life or health of the mother. *Id.* at 164-65.

Respecting right to privacy in first trimester. This bill would allow appropriately licensed or certified health care professionals to perform or assist in performing nonsurgical abortions, which would permit the administration of approved early-abortion facilitating drugs such as RU-486. This expansion of abortion rights is consistent with Roe's mandate that states may not interfere with a woman's right to terminate her pregnancy in the first trimester.

Regulations related to maternal health. This bill would continue to require abortions to be performed by appropriately licensed health care professionals; would subject those who do not comply with the Reproductive Privacy Act to professional discipline; and would subject unlicensed abortion providers to criminal sanctions, in conformity with current law.

Regulations relating to preserving life of viable fetus. In conformity with *Roe v. Wade*, this bill would prohibit state interference with a woman's right to obtain an abortion "prior to the viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

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Support: *Civil rights organizations:* American Civil Liberties Union (ACLU); People for the American Way. *Health care organizations:* American Academy of Pediatrics; American College of Obstetricians and Gynecologists, District IX; California Family Health Council; California Medical Association; California Nurses Association; California Women's and Children's Health Coalition; Faculty of UCSF/SFGH Nurse Midwifery Program; Nurse-Midwives of San Francisco; Planned Parenthood chapters of Golden Gate, Los Angeles, Orange and San Bernardino Counties, Mar Monte, Pasadena, San Diego and Riverside Counties, Santa Barbara, Ventura and San Luis Obispo Counties, Shasta-Diablo, and Six Rivers; Santa Cruz Women's Health Center; T.H.E. Clinic, Inc., of Hawthorne; Women's Lifecycle Medical Group of Inglewood. *Legal organizations:* California Women Lawyers; California Women's Law Center; Lawyers' Club of San Diego; National Health Law Program. *Political organizations:* Democratic Women's Club of Pebble Beach; Democratic Women of Santa Barbara County; Orcutt Republican Club; West Hollywood Democratic Club. *Pro-choice organizations:* California Abortion Rights and Reproductive Rights Action League (CARAL); Medical Students for Choice, USC chapter; Physicians for Reproductive Choice and Health; Religious Coalition for Reproductive Choice; Reproductive Rights Coalition of Monterey County; Reproductive Rights Network of San Luis Obispo County Pro-Choice Coalition; Santa Cruz County; Ventura County Reproductive Rights Network; Voters for Choice. *Women's organizations:* American Association of University Women (AAUW), California, San Jose, and Santa Cruz chapters; California Commission on the Status of Women; Contra Costa Commission for Women; Hadassah; League of Women Voters of California; National Council of Jewish Women; National Latina Alliance; National Organization for Women (NOW), California and Monterey Peninsula chapters; National Women's Political Caucus of California; Older Women's League (OWL); Santa Cruz County Women's Commission; Valley Women's Club; Women's Programs of Monterey Peninsula College. *Other:* JWCH Institute, Inc.

Opposition: California Catholic Conference; California ProLife Council; California Right to Life Committee; Campaign for California Families; Committee on Moral Concerns

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HISTORY

Source: Planned Parenthood Affiliates of California, Inc. (PPAC)

Related Pending Legislation: None Known

Prior Legislation: SB 1360 (Sen. Health & Human Services Cmte.), Ch. 415, Stats. of 1995 (reorganized and renumbered sections of Health and Safety Code, including Therapeutic Abortion Act, formerly located at Sections 25950-25954 of the Code)

****

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PPAC
Planned Parenthood®
Affiliates of California, Inc.
Providing responsible choices through advocacy and political action.

FACT SHEET

THE CALIFORNIA THERAPEUTIC ABORTION ACT OF 1967

Background

The California Therapeutic Abortion Act, which was signed into law by former Governor Ronald Reagan, took effect in November of 1967. The Act added to the statutes Health and Safety Code sections 25950–25954 (these code sections have since been changed to Health and Safety Code sections 123400–123450). It expanded access to abortion services but spelled out various conditions that had to be met before a woman could obtain an abortion. A number of sections were added to the Therapeutic Abortion Act in the 1970's primarily dealing with "conscience clause" issues, treatment of fetal remains, fetal experimentation and fetal "rights." In 1987, a section requiring parental consent or a court order for minors seeking an abortion was enacted and subsequently ruled unconstitutional.

Since 1967, a number of California and Federal court decisions have rendered key provisions of the Therapeutic Abortion Act null and void. However, some other legal opinions have created confusion regarding portions of The Act, most notably the one relating to post-20 week abortions. Confusion also arises because laws ruled invalid by the courts remain in state statute until the Legislature repeals them. All of the invalid provisions of the Therapeutic Abortion Act are still "on the books" in California because the Legislature has never repealed them.

Following is a list of California Therapeutic Abortion Act sections and their current status:

Therapeutic Action Act Section		Section Validity
Section 123400.	Short Title	N/A
Section 123405.	Authority to perform or to aid or assist or attempt abortion; requirements	Invalid regarding medical criteria, medical committee, and hospital requirement for all abortions. *People* v. *Barksdale,* 8 Cal.3d 320 (1972); *Doe* v. *Bolton*, 410 U.S. 179 (1973); *Roe* v. *Wade*, 410 U.S. 113 (1973); *Planned Parenthood* v. *Ashcroft*, 462 U.S. 476 (1983); *Akron* v. *Akron Center for Reproductive Health*, 462 U.S. 416 (1983). May be valid regarding who can perform an abortion. 74 Ops.Atty.Gen 101 (1991).

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Therapeutic Action Act Section		Section Validity
Section 123407.	Pregnancy resulting from rape or incest; approval for performance of abortion	Invalid. *People* v. *Barksdale*, 8 Cal.3d at 328.
Section 123410.	Medical staff committee; number of members required; approval of termination	Invalid relating to medical staff committee. *People* v. *Barksdale*, 8 Cal.3d at 328. Question remains as to its validity regarding post-20 week abortions. 65 Ops.Cal.Atty.Gen. 261 (1982); "Abortion Restrictions and Reporting of Fetal Death," California Department of Health Services, Legal Memorandum, March 31, 1981; *Feminist Women's Health Center* v. *Philibosian*, 157 Cal.App.3d 1076, 1084 fn 3 (1984).
Section 123415.	Mental Health	Invalid. *People* v. *Barksdale*, 8 Cal.3d at 328
Section 123420.	Refusal to participate in abortion; effect; offense	Never challenged. Enforceable.
Section 123425.	Decisions on abortion; loss of privileges or immunities or condition precedent to receipt of public benefits	Never challenged. Enforceable.
Section 123430.	Establishment and maintenance of system for reporting of therapeutic abortions	Never challenged. Enforceable but unclear as to implementation by the Department of Health Services.
Section 123435.	Rights of infant prematurely born alive in course of abortion	Never challenged. Enforceable.
Section 123440.	Research restrictions; fetal remains; unprofessional conduct	Never challenged. Enforceable

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Therapeutic Action Act Section		Section Validity
Section 123445.	Fetal remains; research, experimentation or study; storage; internment or disposal; offense	Never challenged. Enforceable.
Section 123450.	Unemancipated minors; consent requirements; minor's petition for authorization; judgement and order; appeal; fees and costs; offense	Invalid. *American Academy of Pediatrics* v. *Lungren* (1997) 16 Cal.4th 307.

NOTE:

In addition to the California Therapeutic Abortion Act, there are three laws in the Penal Code of California that regulate abortion. They are:

Penal Code section 274. Supplying or administering abortifacient; exception; punishment

Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of the woman, except as provided in the Therapeutic Abortion Act . . . is punishable by imprisonment in the state prison.

Penal Code section 275. Soliciting and submitting to use of abortifacient; exception; punishment

Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, except as provided in the Therapeutic Abortion Act . . . is punishable by imprisonment in the state prison.

Penal Code section 276. Soliciting use of abortifacient; exception; punishment; proof required

Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage, except as provided in the Therapeutic Abortion Act ... is punishable by imprisonment in the county jail not longer than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000). This offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

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SB 1301 (Kuehl) – Reproductive Privacy Act
Background Information

1. Origin of the bill:

a. Source: Planned Parenthood
Sue Dunlap
(916) 446-5247 ext. 104

b. Similar Bill: No.

c. Interim report: No.

2. What is the problem or deficiency in the present law that this bill seeks to remedy?

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under restrictive criteria. Most of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale*. Then the United States Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

3. Background Materials:

Attached please find the fact sheet on the bill.

4. Support/Opposition

Support:

Women's Organizations:
American Association of University Women, California
American Association of University Women, San Jose Chapter
American Association of University Women, Santa Cruz Chapter
California Commission on the Status of Women
California National Organization for Women
California Women's Law Center
California Women Lawyers
Democratic Women's Club, Pebble Beach
Hadassah
League of Women Voters of California

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National Council of Jewish Women
National Latina Alliance
National Organization for Women, Monterey Peninsula Chapter
National Women's Political Caucus of California
Older Women's League
Valley Women's Club
Women's Programs, Monterey Peninsula College

Health Care Organizations:
American College of Obstetricians and Gynecologists, District IX
California Family Health Council
California Medical Association
California Nurses Association
California Women's and Children's Health Coalition
National Health Law Program
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and San Louis Obispo Counties
Planned Parenthood: Shasta-Diablo
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood

Civil Rights Organizations:
American Civil Liberties Union
People for the American Way

Pro-Choice Organizations:
California Abortion & Reproductive Rights Action League
Medical Students for Choice, University of Southern California Chapter
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
Voters for Choice

Opposition:
None received.

Our office will provide additional letters of support for the bill as they arrive.

5. Amendments

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There will be minor clarifying amendments relative to surgical and non-surgical abortion and co-authors will be added to the bill.

6. Witnesses:

Maggie Crosby, ACLU
Additional witness still to be determined

Staff Contact: Jennifer Richard
445-1353

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SB 1301 (Kuehl) – The Reproductive Privacy Act

What does SB 1301 do?

- **Protects the Right to Choice in California**
  The Reproductive Privacy Act will protect Californian's fundamental right to choose a safe and legal abortion – even if the Supreme Court removes the federal protection of *Roe v. Wade.*

- **Provides Women Greater Access to Early Non-Surgical Abortion Methods**
  SB 1301 will provide greater access to early abortion methods like mifepristone (RU-486) by eliminating arbitrary barriers that currently impede the ability of qualified health care professionals to treat patients in the area of reproductive health.

- **Deletes unconstitutional laws**
  SB 1301 deletes language in current state law that has been found unconstitutional in either the state or federal courts.

- **Treats abortion like other comparable medical procedures**
  Today, abortions are singled out for unnecessary regulation that doesn't even apply to more complex procedures. SB 1301 allows healthcare providers, acting within their existing scopes of practice, to both perform and assist in the performance of surgical and non-surgical abortions.

Why is the bill necessary?

In 1967, Governor Ronald Reagan signed the Therapeutic Abortion Act, which expanded legal abortion in California under restrictive criteria. Most of those restrictions were subsequently ruled unconstitutional in the 1972 California Supreme Court case *People v. Barksdale*. Then the United States Supreme Court issued its landmark *Roe v. Wade* decision in 1973, bolstering California's recognition of abortion as a privacy right guaranteed by the Constitution of the United States. Though *Roe* and *Barksdale* have rendered much of the Therapeutic Abortion Act obsolete, the Act itself has never been repealed by the Legislature. The end result is a cryptic, often inconsistent abortion code that is laden with constitutional problems.

Who supports the bill?

The bill is supported by Governor Davis and the top leadership of both the Assembly and Senate. The bill is also supported by women's groups, healthcare providers, civil rights groups, and pro-choice organizations. A complete list of sponsors and supporters is included on the back of this fact sheet.

Why now?

We have an anti-choice President, an anti-choice Congress, and a Supreme Court that's one vote away from overturning *Roe v. Wade.* Now is the time to protect our right to choose – right here in California. SB 1301 would keep abortion safe and legal in California even if the Supreme Court overturns *Roe.*

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Who Supports the Reproductive Privacy Act?

Women's Organizations:
American Association of University Women, California
American Association of University Women, San Jose Chapter
American Association of University Women, Santa Cruz Chapter
California Commission on the Status of Women
California National Organization for Women
California Women's Law Center
California Women Lawyers
Democratic Women's Club, Pebble Beach
Hadassah
League of Women Voters of California
National Council of Jewish Women
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National Women's Political Caucus of California
Older Women's League
Valley Women's Club
Women's Programs, Monterey Peninsula College

Health Care Organizations:
American College of Obstetricians and Gynecologists, District IX
California Family Health Council
California Medical Association
California Nurses Association
California Women's and Children's Health Coalition
National Health Law Program
Planned Parenthood Affiliates of California
Planned Parenthood Golden Gate
Planned Parenthood Los Angeles
Planned Parenthood Orange and San Bernardino Counties
Planned Parenthood Mar Monte
Planned Parenthood of Pasadena
Planned Parenthood of San Diego and Riverside Counties
Planned Parenthood of Santa Barbara, Ventura and San Louis Obispo Counties
Planned Parenthood: Shasta-Diablo
Santa Cruz Women's Health Center
Six Rivers Planned Parenthood

Civil Rights Organizations:
American Civil Liberties Union
People for the American Way

Pro-Choice Organizations:
California Abortion & Reproductive Rights Action League
Medical Students for Choice, University of Southern California Chapter
Reproductive Rights Coalition of Monterey County
Reproductive Rights Network of Santa Cruz County
Voters for Choice

Elected Officials:
Governor Gray Davis
Assembly Speaker Herb Wesson
Senate President Pro Tempore John Burton
Senator Alpert
Assemblymember Alquist
Assemblymember Aroner
Assemblymember Chan
Senator Chesbro
Assemblymember Chu
Assemblymember Cohn
Assemblymember Diaz
Senator Escutia
Assemblymember Firebaugh
Assemblymember Frommer
Assemblymember Goldberg
Assemblymember Jackson
Senator Karnette
Assemblymember Keeley
Assemblymember Kehoe
Assemblymember Liu
Assemblymember Longville
Assemblymember Lowenthal
Assemblymember Nation
Assemblymember Jenny Oropeza
Senator Ortiz
Assemblymember Pavley
Senator Perata
Assemblymember Richman
Assemblymember Romero
Assemblymember Shelley
Assemblymember Simitian
Senator Speier
Assemblymember Strom-Martin
Senator Torlakson
Assemblymember Wayne

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Robert Glen Fogarty
6720 Franklin Place, #108
Hollywood, CA 90028-4510

April 4, 2002

The Honorable Martha Escutia
California State Senate
Sacramento, CA 95814

Sen. Escutia:

As your constituent, I urge you to support the Reproductive Privacy Act (SB 1301), introduced by Sen. Sheila Kuehl.

It is essential that California state law protect the right to choose. Sen. Kuehl s bill would do just that by not only writing into California law the principles of Roe v. Wade, which established a woman s right to choose abortion, but by also eliminating language in current law that treats abortion differently from other medical procedures.

Furthermore, SB 1301 would provide greater access to early and safe abortion by allowing mid-level practitioners under physician supervision to provide early non-surgical abortion methods such as mifepristone (RU-486). Increasing access to non-surgical abortion methods gives women an important option that they can exercise early in their pregnancy.

Again, I urge you to reaffirm California's commitment to reproductive freedom by supporting SB 1301. I look forward to hearing your thoughts on this matter.

Sincerely,

Robert Glen Fogarty

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Alicia Alonzo
12120 Corley 23
Whittier, CA 90604

April 4, 2002

The Honorable Martha Escutia
California State Senate
Sacramento, CA 95814

Sen. Escutia:

As your constituent, I urge you to support the Reproductive Privacy Act (SB 1301), introduced by Sen. Sheila Kuhel.

It is essential that California state law protect the right to choose. Sen. Kuehl s bill would do just that by not only writing into California law the principles of Roe v. Wade, which established a woman s right to choose abortion, but by also eliminating language in current law that treats abortion differently from other medical procedures.

Furthermore, SB 1301 would provide greater access to early and safe abortion by allowing mid-level practitioners under physician supervision to provide early non-surgical abortion methods such as mifepristone (RU-486). Increasing access to non-surgical abortion methods gives women an important option that they can exercise early in their pregnancy.

Again, I urge you to reaffirm California's commitment to reproductive freedom by supporting SB 1301. I look forward to hearing your thoughts on this matter.

Sincerely,

Alicia Alonzo

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CMA California Medical Association
1201 J Street, Sacramento, CA 95814-2906 • (916) 444-5532
Physicians dedicated to the health of Californians

April 9, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

APR - 9 2002

RE: SB 1301 (Kuehl)
CMA Position: Support

Dear Senator Escutia:

The California Medical Association, representing over 34,000 California physicians supports Senate Bill 1301 (as amended on April 8), by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act codifies existing case law that provides access to safe and legal reproductive health services, including abortion services.

In addition, SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice. The April 8 amendments define non-surgical abortion as the use of pharmacologic agents, which are crucial to this bill as it needs to be clear we are not permitting anyone other than physicians to perform invasive procedures due to concerns regarding safety.

The Reproductive Privacy Act eliminates the unconstitutional, unenforceable and antiquated provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Shannon Smith-Crowley, J.D., M.H.A.
Associate Director

Cc: The Honorable Sheila Kuehl
The Members of the Senate Judiciary Committee
Claudia Wrazel, Consultant, Senate Judiciary Committee
Mike Peterson, Consultant, Senate Republican Caucus

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STATE OF CALIFORNIA
GRAY DAVIS, GOVERNOR
COMMISSION ON THE STATUS OF WOMEN
1303 J Street, Suite 400
Sacramento, CA 95814-2900

April 3, 2002

The Honorable Martha Escutia, Chairperson
Senate Judiciary Committee
State Capitol, Room 2205
Sacramento, CA 95814

Dear Senator Escutia:

Re: Support for SB 1301 (Kuehl) Reproductive Privacy Act

The California Commission on the Status of Women requests your "aye" vote on SB 1301. This measure would enact a constitutionally sound reproductive rights law ensuring that a Californian's right to privacy and the decision to choose a safe and legal abortion is protected, now and in the future.

SB 1301 would increase access to early, non-surgical methods of abortion such as mifepristone (RU-486) by allowing healthcare providers, within their particular scope of practice, to perform or assist in the performance of surgical and non-surgical abortions. Further, SB 1301 would delete the unconstitutional and unenforceable provisions of existing state law that create confusion and inconsistency with regard to abortion.

Women's access to health care, including reproductive health care, has been a long-standing priority for the Commission. The Reproductive Privacy Act is critical to the preservation of a California woman's constitutional right to make decisions regarding her reproductive health. SB1301 would protect her fundamental right to privacy and ensure access to a safe and legal abortion.

For these reasons, we ask that you **vote "aye" on SB 1301.** If we can be of any assisance to you, please contact our Executive Director, Mary Wiberg, or our Legislative Coordinator, Vicki Atwood, at 916-445-3173.

Sincerely,

Elmy Bermejo

Elmy Bermejo, Chairperson

cc: The Honorable Sheila Kuehl
Members/Senate Judiciary Committee

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(916) 445-3173 • (916) 322-9466 fax • info@women.ca.gov • www.women.ca.gov

California National Organization for Women
926 J Street, Suite 424 Sacramento, CA 95814
916-442-3414 Fax: 916-442-4765 www.canow.org

April 1, 2002

APR - 9 2002

The Honorable Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 1301 (Kuehl) – SUPPORT

Dear Senator Escutia:

The California National Organization for Women (NOW) is proud to co-sponsor SB 1301 (Kuehl), The Reproductive Privacy Act. SB 1301 would ensure California women's access to safe and legal abortion.

SB 1301 would increase access to safe and early non-surgical abortion methods by allowing qualified health practitioners, such as physician's assistants and nurse practitioners, to provide mifepristone under physician supervision. SB 1301 would also delete provisions in current law that have been found to be unconstitutional and unenforceable by the courts and would establish a reproductive rights law that protects a woman's legal right to choose an abortion.

The Reproductive Privacy Act would ensure that women in California have the freedom to exercise their constitutional right to make decisions regarding their own reproductive health. Please vote AYE on this very important measure when it is heard in the Senate Judiciary Committee.

Sincerely,

Elizabeth McGovern
Legislative Director

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Est. 1972 with 70,000 members and donors, and chapters throughout the state
Megan Seely President ❖ Helen Grieco Executive Director ❖ Elizabeth McGovern Legislative Director ❖ Elena Perez Program Director
Rosemary DaSilva Political Affairs Director ❖ Mandy Benson Field Director ❖ Nikki Ragsac Executive Assistant

DEMOCRATIC WOMEN of SANTA BARBARA COUNTY

April 2, 2002

The Honorable Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

At a recent board meeting, Democratic Women of Santa Barbara County voted to endorse SB 1301 by Senator Kuehl. This bill will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

As you know, SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

barbie deutsch

Barbie Deutsch
President

cc: Senator Jack O'Connell
Assemblymember Hannah-Beth Jackson
Senator Sheila Kuehl

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P.O. Box 90655 Santa Barbara CA 93190 ❖ (805) 568-5932 DemWome

Cara McLane
71 N. Wilson Avenue, #18
Pasadena, California 91106

April 3, 2002

APR - 5

The Honorable Jack Scott

Members of the Judiciary Committee
(*Senators Escutia, Haynes, Ackerman, Kuehl, O'Connell, Peace, Sher*)

Dear Senators:

I am writing to ask for your support of SB 1301, the Reproductive Privacy Act, introduced by Senator Kuehl. This bill is set for hearing on April 9th by the Judiciary Committee.

I feel that this bill is important because it will bring California code into conformance with current federal and state laws. Since the code was last updated in 1967, there have been several decisions by the federal and state Supreme Courts that nullify much of the code that remains on the books today.

In addition, SB1301 will make reproductive medical care available to more women by expanding the legal scope of services of physicians and mid-level practitioners.

Most importantly, I support SB1301 because it puts forth a statement that the State of California respects and recognizes the right of both men and women to ask for and receive the full range of reproductive health care services. As a single woman in my 30s, I deserve and expect to have all options available to me whether I seek health care in a low-cost clinic or a major medical center. I ask you to support SB1301 and show your respect and support for the women in your district and in California.

Sincerely,

Cara McLane

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

JWCH

JWCH INSTITUTE, INC.
1910 W. Sunset Blvd., Suite 650
Los Angeles, California 90026-3290
(213) 484-1186

April 5, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

JWCH INSTITUTE INC.supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Phyllis A. Paxton
Executive Director

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™

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President, Chapter 4
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Fountain Valley, CA

District Executive Director
Kris Calvin, MA
Albany, CA

District Associate Director
Marianne Hockenberry
Albany, CA

March 28, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 1301, AAP-CA Position: Support

Dear Senator Escutia,

The California District of the American Academy of Pediatrics (AAP-CA), representing all four California AAP Chapters, strongly supports the proposed legislation SB 1301, which will be heard in the Senate Judiciary Committee on **Tuesday, April 9th.** SB 1301 would clarify and protect the right of women to obtain an abortion in California, and the rights and responsibilities of health care providers who perform abortions.

Individual California pediatricians, like other individuals, have differing personal views on abortion. However, as an organization of professional health care providers to children and adolescents, the AAP-CA believes strongly that no legal medical procedure should be made inaccessible. Those who oppose abortion may voice that opposition and educate others about their views. However, it is not appropriate for abortions to be singled out for unnecessary regulation (unrelated to the medical procedure itself). SB 1301 would alter and clarify California law to allow healthcare providers, acting within their existing scopes of practice, to both perform and assist in the performance of surgical and non-surgical abortions.

Current California law relating to abortion is inconsistent and in places incoherent. Yet the health care system is intended to serve each individual according to his or her needs, rather than to act as an enforcer for the will of any interest group. SB 1301 would make the laws accessible and consistent so that choice is not blocked. **Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.**

Sincerely,

Robert Black

Robert Black, MD
Chair, AAP-CA State Government Affairs Committee

cc: Senate Judiciary Committee
Kris Calvin, MA, AAP-CA Executive Director
Jackie Miller, Legislative Advocate
Jo Ann Madigan (CalWACHC)
Katie Trueworthy (Planned parenthood)

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

The Honorable Martha Escutia
Chair, Senate Judiciary Committee
State Capitol Building, Room 5080
Sacramento, CA 95814

CALIFORNIA FAMILY HEALTH COUNCIL, INC.

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

On behalf of the California Family Health Council, an organization that represents 65 family planning service providers that operate more than 236 clinic sites throughout the State of California, I write to express our support for SB 1301 (Kuehl). This bill will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

We urge your aye vote on this important legislation.

Sincerely,

Kathleen Mossburg,
Legislative Advocates

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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CJW

MAR 27

ACOG District IX
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THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

DISTRICT IX

WOMEN'S HEALTH CARE PHYSICIANS

March 25, 2001

The Honorable Martha Escutia
Chair, Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Senate Bill 1301 (Kuehl)
ACOG-IX Position: SUPPORT

Dear Senator Escutia:

The American College of Obstetricians and Gynecologists, District IX, representing more than 4300 practicing California physicians, strongly supports Senate Bill 1301 (Kuehl) which is scheduled to be heard in the Senate Judiciary Committee on April 9th.

SB 1301 will repeal provisions of California's Therapeutic Abortion Act which have been found unconstitutional by the courts and replace them with a clear statement regarding a woman's right to choose. This measure also clarifies the role of healthcare professionals in the provision of abortion services. It is our understanding that an amendment will be taken to the bill on April 9th in the Senate Judiciary Committee which clarifies what is meant by nonsurgical abortion. We strongly support the inclusion of this amendment.

ACOG, District IX believes that termination of a pregnancy before viability is a medical matter between a woman and her physician. We support access to care for all individuals, irrespective of financial status, and the availability of all reproductive options. We also oppose any unnecessary regulations or laws which serve to limit or delay access to care, such as those provisions of the Therapeutic Abortion Act which are being repealed by this measure.

For these reasons, we have taken a **SUPPORT** position on SB 1301 and urge your **AYE** vote when this measure comes before you in the Senate Judiciary Committee on April 9th. If I may provide you with additional information regarding our position on this measure, please do not hesitate to contact me at 415.258.9926.

Sincerely,

Joan Hall, JD

Joan M. Hall, JD
Legislative Advocate

cc: Gene Wong

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DISTRICT IX OFFICERS 1999-2002

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Our mission is to ensure that everyone has the knowledge, opportunity and freedom to make every child a wanted child and every family a healthy family.

Thursday, March 28, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood Mar Monte supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Justine Sarver
Associate Vice President of Public Affairs
Planned Parenthood Mar Monte

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Planned Parenthood®
Golden Gate

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood Golden Gate supports Senate Bill 1301, by Senator Kuehl. The bill will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future.

- SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.
- SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.
- The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Dian J. Harrison
President & CEO

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Planned Parenthood®
of Pasadena, Inc.

Telephone: (626) 798-0706 (Clinic)
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Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814
916-445-8390

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood of Pasadena supports Senate Bill 1301, by Senator Kuehl, will protect Californians' fundamental right to choose a safe and legal abortion – even if the Supreme Court further reduces the federal protections contained in *Roe v. Wade*. SB 1301, "the Reproductive Privacy Act", protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

"The Reproductive Privacy Act" eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Kate Alson

Kate Alson
VP of Public Affairs

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March 29, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

Sent Via Fax: 916-445-8390

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

The West Hollywood Democratic Club supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Ruth Williams
Legislative Vice President
West Hollywood Democratic Club

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

CJW

LEAGUE OF WOMEN VOTERS OF CALIFORNIA

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Trudy Schafer

MAR 27 2002

March 23, 2002

The Honorable Martha Escutia, Chair
Committee on Judiciary
California State Senate
P.O. Box 942848
Sacramento, CA 94248-0001

Re: SB 1301 (Kuehl) – Support

Dear Senator Escutia:

The League of Women Voters of California is pleased to support SB 1301 (Kuehl), the Reproductive Privacy Act.

This bill rids California of the provisions of the Therapeutic Abortion Act of 1967 which are antiquated and unconstitutional. It firmly establishes California's commitment to the fundamental right of freedom of reproductive choice by affirming the privacy rights established by *Roe v. Wade*. In addition, it assures women increased access to safe and early methods of abortion by clarifying the ability of health care providers, acting within their existing scopes of practice, to perform or assist in performance of surgical and nonsurgical abortions.

The League of Women Voters supports reproductive freedom and believes that public policy in a pluralistic society must affirm the constitutional right of privacy of the individual. SB 1301 is right for the citizens of California. It will safeguard the privacy of women and ensure that reproductive health care policy guards the safety and health of women in California.

Sincerely,

Barbara Inatsugu

Barbara Inatsugu
President

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

The Nurse-Midwives of San Francisco support Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Margy Hutchison, CNM
SFGH/UCSF Interdepartmental Nurse-Midwifery Education Program and Service

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

The Faculty of the UCSF/SFGH Nurse Midwifery Program supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Rebekah Kaplan, CNM
Associate Education Director
University of California-San Francisco
Interdepartmental Nurse Midwifery Education Program
Clinical Midwife at San Francisco General Hospital

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CALIFORNIA LEGISLATIVE OFFICE
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Valerie Small Navarro, *Legislative Advocate*
Rita M. Tigri, *Legislative Assistant*

1127 Eleventh Street, Suite 531
Sacramento, CA 95814
Telephone: (916) 442-1036
Fax: (916) 442-1743

April 1, 2002

The Honorable Shiela Kuehl
State Capitol, Room 4032
Sacramento, CA 95814

Re: SB 1301 --Support

Dear Senator Kuehl:

The ACLU supports SB 1301, the Reproductive Privacy Act, which replaces the antiquated archaic and unconstitutional provisions of the Therapeutic Abortion Act of 1967. In addition, SB 1301 provides women with greater access to early non-surgical abortions by allowing mid level practitioners, pursuant to their current scope of practice to provide mifepristone (RU-486) under physician supervision. Finally, SB 1301 makes California's abortion law consistent with the principles established by reaffirms the United Supreme Court's 1973 *Roe v. Wade* decision, in which the United States Supreme Court established recognized that the right to privacy protected a woman's right to choose an abortion.

Unconstitutional Provisions of the Therapeutic Abortion Act Should be Repealed

In 1967, Governor Reagan signed the Therapeutic Abortion Act. [1] Health & Safety Code Sections 25950-25954, now codified at Health & Safety Code Sections 123400-123450. As written, the Act established restrictive eligibility criteria for abortions, [2] stringent procedures for authorizing abortion, [3] requirements that abortions occur in accredited hospitals, requirements that only doctors perform abortions, and an absolute ban on abortion past the 20th week of pregnancy. Abortions unauthorized by the Act were felonies. People who performed abortions, women who obtained them, and people who assisted women in terminating pregnancies, were subject to incarceration. Penal Code Sections 274-276.

In November 1972, the California Supreme Court struck down the 1967 Act's eligibility criteria and authorization procedures. *People v. Barksdale*, 8 Cal. 3d 320 (1972). Essentially, Barksdale created abortion on request, but retained the Act's limits on who could perform abortions, where they took place, and limits on late abortions.

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ACLU OF NORTHERN CALIFORNIA
Dorothy M. Ehrlich, *Executive Director*
1663 Mission Street • Suite 460

ACLU OF SOUTHERN CALIFORNIA
Ramona Ripston, *Executive Director*
1616 Beverly Blvd

ACLU OF SAN DIEGO & I
Linda Halle, *Executive Director*
P.O. Box 87131

Three months later, the United States Supreme Court issued its landmark 1973 decisions recognizing abortion as a constitutional right. Those opinions made it clear that two of California's remaining restrictions on abortion-the 20-week limitation (*Roe v. Wade*, 410 U.S. 113 (1973)) and the hospitalization requirement (*Doe v. Bolton*, 410 U.S. 179 (1973))--were unconstitutional.

Despite all these constitutional decisions, the California Legislature has never repealed any portion of the 1967 Act. The entire Act remains on the books. The Legislature has, over the years, passed new laws relating to abortion, which are codified with the Act. Some of those are inconsistent with provisions of the 1967 Act. [4]

Last year, the Legislature repealed the Penal Code provisions that make abortion a felony. [5] At the same time, the Legislature amended the Business & Professions Code to define as unprofessional conduct abortions performed or assisted by people acting outside the scope of valid licenses. This provision is also inconsistent with the Act's doctor-only restriction. Business & Professions Code Section 2253(b).

SB 1301 repeals those sections of the Therapeutic Abortion Act, that have been found unconstitutional, and replaces it with a law that reflects constitutional principles.

Current California Law Addressed by the Reproductive Privacy Act

California law now has two major restrictions on abortion: the doctor-only limit and the ban on post-20 week abortions. It is not clear whether either restriction is valid, because of conflicts between the 1967 Act and subsequent laws, constitutional problems, and arguably incorrect enforcement opinions from anti-choice Attorneys General.

1. Midlevel Practitioners Should be Able to Perform Non-Surgical Abortions When They Are Within Their Scopes of Practice

California statute says that only doctors may "perform, aid or assist or attempt" abortion. (Health & Safety Code Section 123405.) The law is not enforced as strictly and expansively as written; clinicians such as nurses assist with abortions. Moreover, the law cannot be reconciled, either with other sections of the abortion statute [6] or with California's laws governing other advanced practice clinicians. However, an Attorney General opinion by Dan Lungren says that the doctor-only law trumps all other inconsistent laws, and applies both to surgical and to medical abortions. 74 Ops. Cal. Atty. Gen. 101 (1991). This restriction made sense in 1967, when doctors were the only licensed professionals skilled in surgery, then the only procedure for terminating a pregnancy. However, changes in

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

medicine and technology have rendered this restriction obsolete, inconsistent with laws governing all other health care, and unnecessary to ensure patient safety. With the licensing of advanced practice clinicians, such as physicians' assistants, certified nurse-midwives and nurse practitioners, California women should have expanded access to early, nonsurgical abortions delivered by qualified clinicians.

SB 1301 clarifies that midlevel practitioners - nurse practitioners, nurse midwives, and physician assistants -- acting within their scopes of practice may perform or assist in performing nonsurgical abortions, including providing mifepristone (RU-486), an early method of abortion. Abortion should not be treated differently from any other medical procedure. If a midlevel practitioner has the authority to administer medication under his or her scope of practice, then he or she should be able to do so in the abortion context.

2. California's Standard on the Right to Choose an Abortion Should Conform with *Roe v. Wade*

The California statute says that no abortion past the 20th week of pregnancy is legal. (Health & Safety Code Section 123410.) However, this provision is unconstitutional as written. United States Supreme Court decisions establish that the California law is unconstitutional, for three reasons. First, the state may not ban abortions before fetal viability. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973). Second, the state may not define fetal viability according to gestational age, but must allow for an individualized determination by the attending physician. *Planned Parenthood of Central Missouri v. Danforth*, 428 U.S. 52 (1976); *Colautti v. Franklin*, 439 U.S. 379 (1979). Third, even after viability, the state may not force a woman to carry a pregnancy to term that jeopardizes her life or health. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973).

However, an Attorney General opinion by George Deukmejian says that the law may be enforced if interpreted to ban only abortions of viable fetuses with no life or health factors justifying the termination. 65 Ops. Cal. Atty. Gen. 261 (1982). We believe that the law is entirely void and unenforceable, and that, no time limit therefore currently exists on abortion in California. Two trial courts have agreed. [7]

The Reproductive Privacy Act imports the standards established by *Roe v. Wade* providing that "the state may not deny or interfere with a woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman." SB 1301 confirms California's commitment to the rights set forth in the Supreme Court's history ruling.

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With the composition of the Supreme Court likely to change soon, Californians, now more than ever, need to protect their right to reproductive privacy.

If you or your staff would like to discuss our comments, please call us.

Sincerely,

FRANCISCO LOBACO
Legislative Director

VALERIE SMALL NAVARRO
Legislative Advocate

cc: Members and Consultant, Senate Judiciary Committee

[1] The Therapeutic Abortion Act replaced California's old 1850 criminal abortion law, which permitted abortion only to save the life of the pregnant woman. Two years later, in a criminal prosecution of a doctor arising out of the old criminal law, the California Supreme Court ruled the old law unconstitutional. *People v. Belous*, 71 Cal. 2d 954 (1969).

[2] Abortions were permitted only where the pregnancy seriously jeopardized a woman's physical or mental health or where the pregnancy resulted from rape or incest, which had been promptly reported to law enforcement authorities.

[3] The Act required hospital committees to approve each abortion.

[4] For example, the laws on who can perform or assist in performing abortions cannot be reconciled. See discussion below.

[5] SB 370-Burton.

[6] The limitation is inconsistent with Health & Safety Code Section123420, granting the right to refuse to "directly participate" in abortion to "a physician, a registered nurse, a licensed vocational nurse, or any other person employed or with staff privileges at a hospital, facility or clinic." In addition, Business and Professions Code Section 2253(b) authorizes discipline against unlicensed practitioners who "perform or assist" in performing abortions; authorized practitioners are defined to include any person with "a valid, unrevoked, and unsuspended license to practice as a physician and surgeon...or...a certificate obtained in accordance with some other provision of law that authorizes him or her to

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

perform or assist in performing a surgical abortion."

[7] The ACLU filed two lawsuits arguing that the Attorney General could not redraft the 1967 law, that the absolute 20-week ban was plainly unconstitutional and that it was up to the Legislature to write a new law if it wanted to do so. California's statutory 20-week limit is neither valid nor enforceable. The Superior Courts, in Sacramento and Los Angeles, both agreed with us. Because the Attorney General failed to appeal either decision, no binding statewide precedent exists. However, the trial court opinion from Los Angeles is cited in *Feminist Women's Health Center v. Philobosian*, 157 Cal. App. 3d 1076, 1084 n. 3 (1982).

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Planned Parenthood
of San Diego & Riverside Counties

APR - 1

VIA FACSIMILE: (916) 327-8755

The Honorable Martha Escutia
Chairwoman Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood of San Diego and Riverside Counties supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring that reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Amy Denhart
Director of Public Affairs

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April 1, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood: Shasta-Diablo (PPSD) supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Heather A. Hoell
Public Affairs Director

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Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814
Fax: 916-445-8390

April 1, 2002

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood Los Angeles supports SB 1301 (Kuehl), which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. **SB 1301, the Reproductive Privacy Act**, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

Furthermore, the Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Amy Exelby
Director of Legislative Affairs

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RECEIVED
- -2 2002

March 28, 2002

The Honorable Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, California 95814

RE: SB 1301 (Kuehl) – SUPPORT
Senate Judiciary Committee - April 9, 2002

Dear Senator Escutia:

The California Nurses Association supports **Senate Bill 1301**, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

We urge your **"Aye"** vote **on SB 1301.**

Sincerely,

Vicki Bermudez

Vicki Bermudez, RN
Regulatory Policy Specialist

Cc: Members, Senate Judiciary Committee
Consultant
Senator Sheila Kuehl

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The Workmen's Circle/*Arbeter Ring*
Southern California District. Judy Silver, Chairmentsh
Eric A. Gordon, Director. Mark Rogen, Assistant Director

1525 S. Robertson Blvd., Los Angeles, CA 90035-4231
Tel: 310 552-2007 Fax: 310 552-3417 arbetersca@mindspring.com

CELEBRATING OUR 2nd CENTURY 2000

FEB - 4 2002

January 30, 2002

Sen. Sheila James Kuehl
California State Capitol
Room 4032
Sacramento, CA 95814

Dear Sen. Kuehl:

The Workmen's Circle/Arbeter Ring (Southern California District) is proud to be a co-sponsor and supporter of California SB 1301, the Reproductive Privacy Act, reaffirming privacy rights established by Roe v. Wade, among other aspects.

A resolution on Abortion Rights is the first one published in "Where We Stand," a compilation of the resolutions passed at our National Convention in May 2000.

We congratulate you for your work on this bill and wish you success. If we can help you, please let us know how.

With sincere best wishes,

Eric Gordon

for a more beautiful and better world

פאַר אַ שענערע און בעסערע וועלט

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ABORTION RIGHTS

It has been over 25 years since the landmark Supreme Court decision in *Roe v. Wade* granted women the freedom to choose what is best for their own bodies. This basic human right is increasingly coming under fire from the highly organized conservative movement. Attempts to ban so-called "partial birth" abortions through the legislature are combining with successful efforts to keep non-surgical emergency contraceptives out of the hands of women who need them. Efforts to eliminate sexuality education programs in the schools are working in conjunction with attacks on confidentiality rights to disempower teens from making informed and responsible decisions about their bodies. Even in states where the right to choose is securely protected, movements seeking to create mandatory waiting periods are working in tandem with violent attacks on clinics and doctors and the setting up of blockades to prevent patients from entering. Together, they are creating a climate of disruption and intimidation. Add to this the increasing denial of medical coverage for contraceptives and abortions, both through public and private medical plans, and you have a frightening obstruction of a right that has been granted by the Supreme Court.

THE WORKMEN'S CIRCLE/ARBETER RING is unequivocally pro-choice and strongly:

- Supports efforts to maintain a women's right to choose, such as the Family Planning and Choice Protection Act and the Freedom of Access to Clinic Entrances Act
- Opposes efforts to chip away at this right, such as the attempts to legislate mandatory waiting periods and to ban so-called "partial birth" abortions or other abortion procedures
- Supports efforts to uphold this right for minors, by opposing parental consent and notification laws and opposing the so-called "Child Custody Protection Act," which would make it a crime for anyone other than a legal guardian to transport a minor across state lines for an abortion if her state of origin has a law requiring parental involvement.

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- Supports comprehensive sexuality education programs in the schools and opposes the so-called "Parental Rights" laws that make it easier for anti-choice activists to use the courts, state legislatures, and Congress to ban these programs
- Supports universal access to effective non-surgical emergency contraceptives that can prevent pregnancy after sexual intercourse, such as mifepristone (RU 486)
- Supports efforts to ensure that contraceptives are covered under basic health care plans, just like other prescription drugs
- Supports public funding for abortions
- Supports the protection of federal funding for human embryo research

GAY AND LESBIAN RIGHTS

It is shameful that in this day and age, when legal discrimination based on age, race, sex and religion have been eliminated, it is still legal to discriminate based on sexual preference.

It is shameful that gays and lesbians continue to be disempowered and marginalized, and that homosexuality is not accepted as a legitimate orientation. THE WORKMEN'S CIRCLE/ARBETER RING denounces all homophobia and calls for the following actions:

- Promotion and support of federal and local legislation to protect gays and lesbians from discrimination in employment, housing, access to financing, and public accommodations;
- Recognition of the right of gay and lesbian couples to marry and receive all legal benefits currently accorded to married couples, and the repeal of the so-called "Defense of Marriage Act";
- Revision of state laws governing adoption and custody to include gay and lesbian families;
- Repeal of all sodomy laws regarding consenting adults;
- The right of gays and lesbians to serve openly in the armed forces, as well as in the nation's police forces;

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• Protection and maintenance of HIV/AIDS and sexuality education programs in the public schools, as well as the right of students to form gay and lesbian organizations in schools and universities;

• Requiring that where sexuality is presented, school materials present a balanced view of homosexuality;

• Condemnation of discrimination against gays and lesbians by private organizations; and

• Fair and equitable treatment of gay and lesbian issues in the media.

We are pleased that the state of Vermont is establishing "civil unions" that will provide nearly all the benefits and protections for gay and lesbian partnerships in Vermont that heterosexual marriages there currently enjoy. We are concerned, however, with the state's decision to carve out a separate classification for gay and lesbian couples, rather than expand the definition of marriage. "Civil unions" may not be recognized by any other state, nor may they be eligible for Federal benefits. Only when gay and lesbian partnerships are accorded full marital status will they attain full equality; interim measures like Vermont's are a good first step, but should not be considered a lasting solution.

OUR NATION'S CHILDREN AND THEIR EDUCATION

Our nation's future is in its children: the workforce, civic leaders, educators, and consumers of tomorrow.

All children need and deserve a healthy start: to be properly nourished before birth, in infancy and during their growing years; to receive basic health care both prenatally and during the crucial early years after birth; to receive protection from abuse and neglect; to receive a head start with quality preschool and child care to help them get ready to learn, stay in school, and prepare for the future.

Schools should be safe both in their structure and their emotional climate. Children need true classrooms, not ones converted from closets, toilets, hallways, etc. Class sizes should be small enough to allow full

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GRAY PANTHERS
CALIFORNIA

5313 Fernwood Way
Sacramento, CA 95841
(916)332-5980

FEB - 5 2002

The Honorable Sheila Kuehl
State Capitol Mr. #4032
Sacramento, CA 95814

February 1, 2002

Re: SB 1301

Dear Senator Kuehl:

Gray Panthers California joins with the distinguished list of supporters of your measure, SB 1301, the Reproductive Privacy Act. We believe that this is an important bill to seek a contemporary law governing abortion in California.

Gray Panthers are concerned about the potential for erosion of women's rights, especially in view of the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967. We have both a respect for our constitution and for women's rights to reproductive freedom. Your bill will place California in the role of leader in the US on issues of choice.

Women should have an undeniable right to early abortion methods such as RU-486 and to health professionals who are protected in their ability to perform and assist in the performance of surgical and non-surgical abortions. This bill will protect these professionals.

We strongly support the Roe v. Wade decision and stand firm against any threat to the rights that decision permitted.

Thank you for taking the side of women. We will support you as we can in this measure.

Sincerely,

Joan B. Lee
Legislative Liaison
Gray Panthers California

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[illegible]ned Federal Campaign #6220

MAR - 5

March 2, 2002

The Honorable Sheila James Kuehl
California State Senate
State Capital, Room 4032
Sacramento, California 95814

RE: SB 1301

Dear Senator Kuehl,

It is my pleasure to submit this letter of support for SB 1301, the bill you have authored to ensure that California has a constitutionally sound abortion law that will protect privacy rights, now and in the future.

As you know, a women's right to choose has been under constant attack since the U.S. Supreme Court decided Roe v. Wade. The conservative rightwing is as persistent as they are vicious in their crusade to eliminate hard fought gains for women and girls. We are pleased that SB 1301 will codify those gains thereby lessening the conservative movement's ability to achieve its ultimate goal of eliminating a woman's right to choose.

SB 1301 is a crucial piece of legislation. Your fellow CWLC Board Members commend you for your leadership in authoring the bill and we are proud to express our support.

Sincerely,

Marjorie R. Sims
Executive Director

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STATE OF CALIFORNIA
GRAY DAVIS, GOVERNOR
COMMISSION ON THE STATUS OF WOMEN
1303 J Street, Suite 400
Sacramento, CA 95814-2900

March 5, 2002

The Honorable Sheila Kuehl
Member of the State Senate
State Capitol, Room 4032
Sacramento, CA 95814

Dear Senator Kuehl:

Re: Support for SB 1301 (Kuehl) Reproductive Privacy Act

The California Commission on the Status of Women is supportive of your measure, SB 1301 which would enact a contemporary law governing abortion in California. We agree that this measure is necessary in order to ensure that California women's right to reproductive freedom is protected by a constitutionally sound abortion law.

The Commission has adopted as areas of focus for 2002 the Underserved, Equity, and Economic Autonomy, including Access to Health Care and the Preservation of Women's Reproductive Freedom. Women's reproductive freedom and access to reproductive health care are of paramount importance to the women of California, and continue to be a high priority for the Commission.

If we can be of assistance to you at any time, please contact Vicki Atwood, the Commission's Legislative Coordinator, at 916-322-9462.

Sincerely,

Elmy Bermejo
Chairperson

cc: Jennifer Richard

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CARAL

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www.caral.org

California Abortion and Reproductive Rights Action League

March 5, 2002

Senator Martha Escutia
Chair, Senate Judiciary Committee
State Capitol Room 5080
Sacramento, CA 94248-0001

RE: SB 1301 (Kuehl) Support

Dear Senator Escutia,

CARAL, the California Abortion and Reproductive Rights Action League, representing over 5,000 members, co-sponsors and strongly supports SB 1301. SB 1301, the *Reproductive Privacy Act*, is a contemporary law governing abortion in California, which replaces the antiquated and unconstitutional provisions of the *Therapeutic Abortion Act* of 1967.

Signed by Governor Ronald Reagan, the *Therapeutic Abortion Act* expanded legal abortion in California under restrictive criteria. SB 1301 would delete language in current state law that has been found unconstitutional in either the state or federal courts. The *Reproductive Privacy Act* reflects California's current status as an innovative leader in assuring its citizens have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

In addition, the *Reproductive Privacy Act* would provide women with greater access to abortion services by allowing nurse practitioners, nurse midwives, physician assistants, and other qualified health care professionals to act within their existing scope of practice in relation to assisting with surgical abortions and dispensing mifepristone (formerly known as RU-486).

SB 1301 reaffirms the United States Supreme Court's 1973 *Roe v. Wade* decision, which established a woman's legal right to choose an abortion. SB 1301 would ensure that California has a constitutionally firm abortion law that protects the reproductive rights of all Californians, now and in the future.

Please help protect the reproductive rights of women throughout California by voting AYE on SB 1301 when it is heard in the Senate Judiciary Committee.

Sincerely,

Belle Taylor-McGhee

Belle Taylor-McGhee
Executive Director

cc: Senator Sheila Kuehl

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Promoting Reproductive Choices Throughout California

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March 19, 2002

The Honorable Martha Escutia – Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

Planned Parenthood Affiliates of California (PPAC) supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Sue Dunlap
Vice President of Public Policy

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APR -2 2002

By Facsimile and Mail
March 27, 2002

Hon. Martha M. Escutia
Chair
Senate Judiciary Committee
Capitol Building No. 5080
Sacramento, California 95814

Re: California Reproductive Privacy Act - Senate Bill 1301

Dear Chair Escutia:

We are writing on behalf of People For the American Way and our more than 50,000 California members in strong support of Senate Bill 1301, the California Reproductive Privacy Act. For over twenty years, People For the American Way has worked to defend our nation's commitment to fundamental civil rights and constitutional liberties, including women's reproductive rights. SB 1301 will help secure and promote the privacy and reproductive rights of California women and we urge the Senate Judiciary Committee to support this important legislation.

The California Reproductive Privacy Act ("the Act") would repeal outdated state law provisions restricting a woman's right to choose that have been found unconstitutional in court and would replace them with an explicit recognition and protection of privacy rights established by the U.S. Supreme Court in its 1973 Roe v. Wade decision. The Act explicitly protects the right to choose or refuse birth control and the right to bear a child or to terminate an unwanted pregnancy prior to viability and in cases where necessary to protect the life and health of the woman. While People For the American Way is working hard along with others to ensure that a future Supreme Court will not reverse Roe v. Wade and undermine the right to privacy, the threat is real and it makes sense for California to add its significant voice to this fight and to secure these rights for its residents for generations to come.

In addition, the California Reproductive Privacy Act would increase women's access to early and safe methods of terminating an unwanted pregnancy, including the use of mifepristone also known as RU-486 and other "emergency contraceptives." The Act would remove unwarranted restrictions that had been placed at an earlier time on the ability of nurses and other health practitioners to dispense medicine and to assist in the

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performing of abortions within the scope of their practice, licenses and certificates as authorized by law. These outdated restrictions had singled out procedures related to abortion and applied unnecessary regulations that are not applicable to much more complex medical functions and procedures. SB 1301 would ensure that qualified health care professionals, acting within the existing scope of their practice, would be able to treat patients in the area of reproductive health as they do in other medical areas.

In sum, SB 1301 is a sound and important piece of legislation that will help protect the privacy rights and reproductive health of California women. We urge you to pass SB 1301 out of committee and to support the enactment of this legislation as soon as possible.

Sincerely,

Ralph G. Neas
President

Sincerely,

Julie Burton
California Director

Cc: Members of the Senate Judiciary Committee

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AMERICAN
ASSOCIATION OF
UNIVERSITY
WOMEN

CALIFORNIA

SUPPORT
SB 1301

April 1, 2002

Tina Hester
Legislative Advocate

TO: Chairperson Martha Escutia
Members of the Senate Judiciary Committee

RE: SB 1301 (Kuehl)

The American Association of University Women – CA strongly support Senate Bill 1301, by Senator Sheila Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future.

For years, abortion services have been singled out for unnecessary regulations when compared to similar surgical procedures. SB 1301, the Reproductive Privacy Act, will help to eliminate that stigma and ensure reproductive health care services are performed in the safest manner possible.

With the advent and approval of RU 486, the earlier name for mifepristone, women have other options besides surgery to end an unwanted pregnancy. SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

AAUW-CA has long supported reproductive rights and the organization urges you to vote **AYE on SB 1301** when it is heard in Senate Judiciary Committee on April 9, 2002.

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APR -3

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Hon. Sheila James Kuehl
California Senate

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Combined Federal Campaign #6220

March 28, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia,

The California Women's Law Center supports Senate Bill 1301, (Kuehl), which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future.

A women's right to choose has been under constant attack since the U.S. Supreme Court decided Roe v. Wade. The anti-choice movement is as persistent as they are vicious in their crusade to eliminate hard fought gains for women and girls. We are pleased that SB 1301 will codify those gains thereby lessening the conservative movement's ability to achieve its ultimate goal of eliminating a woman's right to choose.

SB 1301 also increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice. This will be a tremendous help to women particularly those living in rural communities.

SB 1301 is a crucial piece of legislation. Please support SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Marjorie R. Sims
Executive Director

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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From the office of:

CWL
CALIFORNIA
WOMEN
LAWYERS

Executive Office
650 Howe Ave., Suite 555
Sacramento, CA 95825
Phone: (916) 646-3114
Fax: (916) 646-6469
E-mail: cwlsac@cwo.com
www.cwl.org

APR - 3

March 28, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

California Women Lawyers (CWL) supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Belynda Reck

Belynda Reck
President

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Affiliates: *Asian Pacific American Women Lawyers Alliance; Black Women Lawyers Association of Los Angeles; Contra Costa County Bar Association -Women Section; Fresno County Women Lawyers; Kern County Women Lawyers; Lawyers Club of San Diego; Monterey County Women Lawyers; Napa County Women Lawyers; Orange County Women Lawyers; Queen's Be Lawyers Alliance; Santa Barbara Women Lawyers; Santa Clara County Bar Association Women Lawyers Committee; Solano County Women in the Law; Women Lawyers A Lawyers' Association of San Luis Obispo County; Women Lawyers of Alameda County; Women Lawyers Section of San Mateo County Bar Association; Women Law Sacramento; Women Lawyers of Santa Cruz County; Women Lawyers of Ventura County*

OWL/CA

Older Women's League of California
926 J Street #1117, Sacramento CA 95814
♦ (916) 444-2526 - Fax (916) 441-1881

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VOICES OF MIDLIFE AND OLDER WOMEN

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National Board
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SW Region
Sacramento
Jean Stein,
San Diego

April 1, 2002

Support for SB 1301 Kuehl

The Honorable Sheila Kuehl
State Capitol
Sacramento, Ca 95814

Dear Senator Kuehl:

The Older Women's League is pleased to be a supporter of SB 1301, The Reproductive Privacy Act. This bill does many things to clarify the rights of women and the roles of professionals in the matter of abortion. With the availability of new methods of abortion, this bill is especially important. The provisions of this bill will eliminate barriers which could impede care. The privacy provisions of this bill reflect the respect for women's rights, a premise which is inherent in the bill.

We have come to understand that this is an unending subject for dissent. We believe that stating the issue as clearly as this bill does will work well for the future of California women.

Yours truly,

Betty Perry

Betty Perry
Public Policy Director
Older Women's League of California

National Office, 666 Eleventh St., N.W., Suite 700, Washington, DC

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Contra Costa Commission for Women

20 Allen Street ◇ Martinez, CA 94553 ◇ 925-370-5149

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Mitzi Sales
Nicole Souza
Phyllis Gordon
Elizabeth Williams-Jones

Linda Douglas
925/370-5055
925/370-5098 (fax)

April 4, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

The Contra Costa Commision for Women supports Senate Bill 1301, by Senator Kuehl, which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are performed in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

Please vote Aye on SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Mitzi Sales
Immediate Past Chair of Commission

The Contra Costa Commission for Women's mission is to improve the economic status, social welfare, and overall quality of life of women in Contra Costa County.

Sponsored by The Contra Costa County Board of Supervisors

www.womenscommission.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

National Health Law Program, Inc.

MAIN OFFICE
2639 South La Cienega Boulevard
Los Angeles, California 90034
(310) 204-6010
Fax #: (310) 204-0891

BRANCH OFFICES
1101 14th Street, N.W. Suite 400
Washington, D.C. 20005
(202) 289-7661
Fax#: (202) 289-7724

211 N. Columbia St. 2nd Floor
Chapel Hill, N.C. 27514
(919) 968-6308
Fax#: (919) 968-8855

March 27, 2002

Senator Martha Escutia, Chair
Senate Judiciary Committee
State Capitol, Room 5080
Sacramento, CA 95814

RE: Support for SB 1301 (Kuehl)

Dear Senator Escutia:

The National Health Law Program (NHeLP) is a private, non-profit organization that has worked for the past 30 years to gain access and improve quality health care for individuals with limited income. We are based in Los Angeles and have a long history of working collaboratively with California advocates on issues of Medi-Cal, Medi-Cal managed care, Healthy Families, reproductive health and indigent care.

I write on behalf of NHeLP to strongly support SB 1301 which will ensure that California has a constitutionally sound reproductive rights law that protects privacy rights, now and in the future. SB 1301, the Reproductive Privacy Act, protects women by ensuring reproductive health care services are provided in the safest manner possible while eliminating the stigma the law has historically placed on the option of abortion services.

Access to the full scope of reproductive health services is a necessary and integral component of the quality, continuum of care for women of childbearing age. SB 1301 increases access to early, non-surgical methods of abortion by allowing nurse practitioners, certified nurse midwives, and physician assistants, to perform non-surgical abortion pursuant to their current scope of practice.

The Reproductive Privacy Act eliminates the unconstitutional and unenforceable provisions of state law to reflect California's current status as an innovative leader in ensuring its people have the freedom to exercise the constitutional right to make decisions regarding their own reproductive health.

We urge your support SB 1301 when it is heard in Senate Judiciary Committee on April 9, 2002.

Sincerely,

Lourdes A. Rivera
Managing Attorney

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: California Women Lawyers

Contact Name: Andrea Carlise - President-Elect

Address: 650 Howe Ave., Suite 555
Sacramento, CA 95825

Phone/Fax: (510) 205-1255 (916) 646-3114 fax (916) 646-6469

E-Mail: AndreaCarlise@msn.com ; cwlsac@cwo.com

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Planned Parenthood Mar Monte

Contact Name: Eileen TREMAIN

Address: 1900 Garden Road, Ste 230
Monterey, CA 93940

Phone/Fax: 831-373-1709 x 17

E-Mail: eileen-tremain@ppmarmonte.org

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

Dear Friends and Partners:

With the United States Supreme Court poised to change its composition and the *Roe v. Wade* decision in peril, it's more important than ever we protect our constitutionally guaranteed right of reproductive choice. That's why we ask that your organization join us in supporting the Reproductive Privacy Act, a contemporary abortion law for California that replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

The bill accomplishes four primary objectives for Californians: to provide women greater access to early non-surgical abortions, to remove unnecessary restrictions on abortion procedures, to delete unconstitutional provisions of the Therapeutic Abortion Act and to reaffirm privacy rights established by *Roe v. Wade*.

It is imperative that California clarifies in the law precisely what reproductive privacy rights the women and men of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally firm abortion law that would protect privacy rights, now and in the future. By treating abortion consistently with other medical procedures, SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services, replacing it with a declaration in support of the constitutional right to privacy and individual choice.

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: T.H.E. Clinic Inc

Contact Name: Donzella Lee

Address: 14051 Lemoli Avenue
Hawthorne CA 90251

Phone/Fax: (323) 295-6571 x 3004 / (323) 295-6577

E-Mail: dpiee@thedinclinic.org

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

ORCUTT REPUBLICAN CLUB

P.O.BOX 2007 ORCUTT, CALIFORNIA 93455

April 2, 2002

To our State Legislator

The vast majority of the 97 members of this organization feel strongly that the Reproductive Privacy Act (S.B. 1301 by Sen. Kuehl) is our chance to protect the right to choose in California even if the Supreme Court overturns Roe v. Wade. Therefore, we strongly urge you to support this legislation to protect safe and legal abortions in California.

Legal abortions are preferred to illegal back alley abortions as were common prior to Roe v. Wade.

The recent vote on this matter, and resolution to forward this letter ran 81 for and 16 opposed. Those who were not present at our recent monthly meeting were sent ballots on this and other matters to be mailed in and tabulated. All members thus were included.

Sincerely,

Carlos Cardona

Carlos Cardona, Pres.
O. R. C.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Democratic Women's Club

Contact Name: Shirley Preussin

Address: 2836 SLOAT ROAD
PEBBLE BEACH, CA 93953

Phone/Fax:

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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It is imperative that California clarifies in the law precisely what reproductive privacy rights the women and men of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally firm abortion law that would protect privacy rights, now and in the future. By treating abortion consistently with other medical procedures, SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services, replacing it with a declaration in support of the constitutional right to privacy and individual choice.

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Ventura County Reproductive Rights Network

Contact Name: Marc Wilde

Address: P.O. Box 6601
Ventura, CA 93006-6601

Phone/Fax: (805) 677-5560

E-Mail: marc.wilde@ppfa.org

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Yes, please add our name to the attached letter. SB 1301 is needed this year! **Please fax this form back to PPAC at (916) 441-0632 and/or calling us at 916-446-5247.**

Organization: Lawyers Club of San Diego

Contact Name: Kate Yavenditti

Address: 964 Fifth Ave., Ste. 210

San Diego, CA 92101

Phone/Fax: 619 544-1478

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Women's Lifecycle Medical Group

Contact Name: Sherreen Beverly, MD, FACOG

Address: 501 E. Hardy St., Suite 400
Inglewood, CA 90301

Phone/Fax: 310-673-4504 (O) 310-673-4499 (F)

E-Mail: Shebe3588@aol.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE

Contact Name: REV ANN HAYMAN

Address: PO BOX 5396

VAN NUYS CA 91409

Phone/Fax: 310 396-7622

E-Mail: alhayman@sprynet.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Yes, please add our name to the attached letter. SB 1301 is needed this year! **Please fax this form back to PPAC at (916) 441-0632 and/or calling us at 916-446-5247.**

Organization: San Luis Obispo County Pro-Choice Coalition

Contact Name: Amanda B. Root

Address: PO Box 12244

San Luis Obispo, CA 93406

Phone/Fax:

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: National Council of Jewish Women, Los Angeles

Contact Name: Barbara Dobkin

Address: NCJW/LA
543 N. Fairfax, L.A., Ca. 90036

Phone/Fax: Ruth Williams - (323) 651-2930

E-Mail: babsdobkin@hotmail.com
and ADVOCACY@ncjwla.org

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

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Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: National Latina Alliance

Contact Name: Mireya Gutierrez

Address: P. O. Box 712066
Los Angeles, CA. 90071

Phone/Fax: (213) 626 0571 x 286 213 623-7755

E-Mail: mireyagutierrezrkm@yahoo.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: AAUW (San Jose)

Contact Name: Denelle Fedor

Address: 101 Glen Eyrie Ave., #307
San Jose, CA 95125

Phone/Fax:

E-Mail:

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Reproductive Rights Coalition of Monterey County

Contact Name: Jean Richards, Chair

Address: PO Box 813
Monterey Ca. 93942

Phone/Fax: (831) 674-0688

E-Mail: webactivist@yahoo.com

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: National Org. for Women - Monterey Peninsula Chap.

Contact Name: Jean Richards

Address: 225 Larson Lane
Greenfield, Ca 93927

Phone/Fax:

E-Mail: Webactivist@yahoo.com

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

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Organization: PEOPLE FOR THE AMERICAN WAY

Contact Name: DERRICK SANDERS

Address: 2852 SOUTH BARRINGTON AVENUE
LOS ANGELES, CA 90064-3613

Phone/Fax: 310-478-6657 ; 310-478-5857 fax

E-Mail: dsanders@pfaw.org

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Organization: National Women's Political Caucus of CA

Contact Name: Sharon A. Ball

Address: 2033 Manzanita Dr.
Oakland, CA 94611

Phone/Fax: 510-339-2546 (707-929-1545 fax)

E-Mail: kball@earthlink.net

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Organization: NATIONAL COUNCIL OF JEWISH WOMEN

Contact Name: RUTH WILLIAMS

Address: 543 No. FAIRFAX AVE
LA CA 90036

Phone/Fax: 323-651-2930 323-651-5348 FAX

E-Mail: RUTH_W@NCJWLA.ORG.

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

To: Katie Innsworthy

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

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Organization: Voters For Choice

Contact Name: DORKA KEEHN

Address: 2821 Bush
SF CA 94115

Phone/Fax: 415 885-3240

E-Mail: dkeehn@voters4choice.org

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MPC Ro' Program

Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

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Organization: Women's Programs, Monterey Peninsula College

Contact Name: Phyllis Peet, Director

Address: 980 Fremont St
Monterey Ca 93940

Phone/Fax: 646 4276

E-Mail: -

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: Valley Women's Club

Contact Name: Sheila De Lany

Address: PO Box 574
Ben Lomond Calif. 95005

Phone/Fax: (831) 336-4436

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: AAUW

Contact Name: STEPHANIE WELLS

Address: 3905 WINKLE AVE.
SANTA CRUZ, CA -95065

Phone/Fax: 831-476-4488

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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Organization: SANTA CRUZ WOMENS HEALTH CENTER

Contact Name: DORIAN SEAMSTER

Address: 250 LOCUST ST.
SANTA CRUZ CA 95060

Phone/Fax: 831 427-3500 831 457-2486

E-Mail: dorianseamster@hotmail.com

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Organization: National Health Law Program

Contact Name: Lourdes Rivera

Address: 2639 S. LA Cienega Blvd
Los Angeles, CA 90034

Phone/Fax: 310/204-6010, 310/204-0891:F

E-Mail: rivera@healthlaw.org

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Organization: Older Women's League

Contact Name: Betty Perry

Address: 926 - J Street, Ste 1117
Sacramento, CA 95814

Phone/Fax: P- (916) 444-2526 F- (916) 441-180

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Organization: Medical Students For Choice, University of Southern California Chapter

Contact Name: Kristina Rios

Address: 107 S. Holliston #205
Pasadena, CA 91106

Phone/Fax: 626-796-3098

E-Mail: krios@usc.edu

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I thought I had submitted this, but apparently not —

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Organization: Reproductive Right Network of Santa Cruz County

Contact Name: Cynthia Mathews

Address: 1119 Pacific Ave, Suite 210
Santa Cruz, Ca 95060

Phone/Fax: 831/425-1551 x 29

E-Mail: 831/425-0217

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Organization: Planned Parenthood Mar Monte

Contact Name: Justine Sarver

Address: 1691 The Alameda
San Jose CA 95126

Phone/Fax: 916 446-5037 x133

E-Mail: 916 446-3274

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Organization: Democratic Women of santa barbara county

Contact Name: barbie deutsch, president

Address: pobox 90655
santa barbara, ca 93190

Phone/Fax: (805) 967-6665 (both)

E-Mail: lady-go-blue@cox.net / DemWomenSB@cox.net

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Support SB 1301 (Kuehl)

Dear Friends and Partners:

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Organization: Physicians for Reproductive Choice and Health

Contact Name: Carlie Steed and Naomi Sicherman

Address: 55 West 39th St., 10th Floor

New York, NY 10018

Phone/Fax: (646) 366-1890 / (646) 366-1897

E-Mail: carlie@prcht.org and naomi@prcht.org

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Organization: AAUW

Contact Name: Greta Neelsen

Address: 330 Loyola Drive
Aptos CA 95003

Phone/Fax:

E-Mail:

LEGISLATIVE INTENT SERVICE, INC. (530) 666-1917

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American Association of University Women, California ~ American Civil Liberties Union ~ American College of Obstetricians and Gynecologists IX, ~ California Abortion & Reproductive Rights Action League ~ California Family Health Council ~ California Medical Association ~ California National Organization for Women ~ California Nurses Association ~ Hadassah ~ League of Women Voters of California ~ Planned Parenthood Affiliates of California ~ California Commission on the Status of Women ~

Dear Friends and Partners:

With the United States Supreme Court poised to change its composition and the *Roe v. Wade* decision in peril, it's more important than ever we protect our constitutionally guaranteed right of reproductive choice. That's why we ask that your organization join us in supporting the Reproductive Privacy Act, a contemporary abortion law for California that replaces the antiquated and unconstitutional provisions of the Therapeutic Abortion Act of 1967.

The bill accomplishes four primary objectives for Californians: to provide women greater access to early non-surgical abortions, to remove unnecessary restrictions on abortion procedures, to delete unconstitutional provisions of the Therapeutic Abortion Act and to reaffirm privacy rights established by *Roe v. Wade.*

It is imperative that California clarifies in the law precisely what reproductive privacy rights the women and men of this great state enjoy. The Reproductive Privacy Act will ensure that California has a constitutionally firm abortion law that would protect privacy rights, now and in the future. By treating abortion consistently with other medical procedures, SB 1301 will ensure the safety of reproductive health care while eliminating the stigma the law has historically placed on the option of abortion services, replacing it with a declaration in support of the constitutional right to privacy and individual choice.

Yes, please add our name to the list of supporters. SB 1301 is needed this year!
Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: Santa Cruz County Womens Commission

Contact Name: Andrea Smith

Address: 701 Ocean St., Rm 30
Santa Cruz, CA 95060

Phone/Fax: (831) 454-2772

E-Mail: commissions@co.santa-cruz.ca.us

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Co-Sponsors and Supporters of SB 1301 by Senator Sheila Kuehl:

American Association of University Women, California – American Civil Liberties Union – American College of Obstetricians and Gynecologists IX. – California Abortion & Reproductive Rights Action League – California Family Health Council – California Medical Association – California National Organization for Women – California Nurses Association – Hadassah – League of Women Voters of California – Planned Parenthood Affiliates of California – California Commission on the Status of Women –

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Please fax this form to PPAC at (916) 441-0632 and/or call us at 916-446-5247.

Organization: WEST HOLLYWOOD DEMOCRATIC CLUB

Contact Name: RUTH WILLIAMS - LEGISLATIVE VICE PRES.

Address: 7548 LEXINGTON AVE
WEST HOLLYWOOD 90046

Phone/Fax: 323-874-0728 FAX: 323-874-7322

E-Mail: RUTHWH@AOL.COM

Attn: Katie
From: PPLA
Antionette

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CJW

CAMPAIGN FOR CALIFORNIA FAMILIES

Fighting To Restore Family-Friendly Values

www.savecalifornia.com

March 28, 2002

The Honorable Martha Escutia
Chair, Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

Re: SB 1301 (Kuehl) -- Oppose

Dear Senator Escutia:

Campaign for California Families opposes SB 1301 because it celebrates the killing of pre-born children as a "fundamental right." Abortion ends a pregnancy by destroying and removing the developing child. That baby's heart has already begun to beat by the time the mother misses her period and begins to wonder if she might be pregnant (about 31 days after the mother's last menstrual period or LMP). Surgical abortions are usually not performed before seven weeks, or 49 days LMP. By that time, the baby has identifiable arms and legs (day 45) and displays measurable brain waves (about 40 days). During the seventh through the tenth weeks, when the majority of abortions are performed, fingers and genitals appear and the child's face is recognizably human.

True fundamental rights include the right to life. SB 1301 celebrates abortion, a horrible act that kills 100% of the unborn children who suffer through it. The vast majority of all abortions performed today are done for social, not medical reasons -- because a woman doesn't feel ready for a baby at the time, because her partner wants her to have an abortion, etc. Approximately 93% of all induced abortions are done for elective, non-medical reasons such as these. Destroying innocent human life for convenience is wrong and should not be seen as a celebration of "privacy" or anything else.

Sincerely,

Erik Hartstrom
Legislative Analyst
Campaign for California Families

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CALIFORNIA RIGHT TO LIFE COMMITTEE, Inc.

1610 OAK PARK BLVD., STE. 1
PLEASANT HILL, CA 94523
(925) 944-5351 FAX (925) 944-5449
Established 1981
E-Mail: callife@calright2life.org **Web Site: calright2life.org**

APR - 2 '02

To: Honorable Martha Escutia, Chair
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

From: Liz Froelich
Legislative Analyst

Date: March 27, 2002

RE: SB SB 1301 (Kuehl) Reproductive Privacy Act
Position: OPPOSITION

California Right to Life opposes SB 1301. It is a deceptive maneuver initiated without sufficient discussion to install a state version of the federal *Roe vs. Wade* Supreme Court decision of 1973. *Roe vs. Wade* was never ratified by Congress. Neither should our state legislators circumvent the will of the People.

SB 1301 appears to create a new category for medical and medically related personnel to perform abortions or assist in abortions. Not even *Roe vs. Wade* allow non-physicians to perform abortions.

This is a special interest bill designed to further ease the regulations on abortion providers and to protect them from legal and/or civil action.

California Right to Life urges a NO vote.

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18 WEEKS

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COMMITTEE ON MORAL CONCERNS

Art Croney, *Executive Director/Lobbyist*
Office: (916) 446-5131
FAX: (916) 446-5744

P.O. Box 2768
Sacramento, CA 95812

RECEIVED
-1 2002

April 1, 2002

Senate Judiciary Committee

Please vote **NO** on **SB 1301** (Kuehl); abortion.

This bill would recast California's Therapeutic Abortion Act, calling it the Reproductive Privacy Act and bringing it in line with U.S. Supreme Court decisions starting with Roe v. Wade. The bill anticipates, prematurely we believe, the overturning of the Supreme Court's 1973 judgment. The Committee On Moral Concerns opposes this bill for the following reasons:

1. The bill finds and declares that "every individual possesses a fundamental right of privacy with respect to personal reproductive decisions" (page 6, lines 34 & 35). We agree. However, the bill later conflicts with its own declaration. Biologically, the life of the individual human being begins at the moment of conception. The bill gives certain individuals (women) the right to abort and fatally interfere with the reproductive right of other individuals (their sons and daughters who are living and growing, but not yet born).

2. The bill defines pregnancy as "beginning with the implantation of an embryo." This is politically convenient, but ungrounded in scientific reality. We know where babies come from. Pregnancy begins at conception. That is the principle on which in vitro fertilization works. Also, conception is the *only* time in our lives when our fathers had any contribution to our genetic characteristics. When an embryo fails to exit the fallopian tube this becomes a life-threatening ectopic *pregnancy*. Doctors and scientists who are unmotivated by politics know that pregnancy occurs before implantation in the uterus.

3. The bill defines "viability" as the point when the human fetus may survive outside the uterus. This is another political term lacking real meaning. As individuals, some of us could sustain survival outside the womb earlier than others, just as some of us could survive in the wilderness longer. Again, the bill's findings recognize individuals, but later language clouds that recognition.

4. The bill allows abortion any time before birth. Under Section 123468 (b) (2), aborting a viable human fetus is legal, ~~if~~ unless continuing the pregnancy until birth poses "no risk to the life *or health* of the pregnant woman." Since there is no such thing as an absolutely risk-free childbirth, under the bill, there is no such thing as an illegal abortion, as long as the abortionist is licensed.

Art Croney

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CALIFORNIA PROLIFE

RECEIVED
APR -5 2002

April 4, 2002

Senator Martha Escutia, Chairwoman
Senate Judiciary Committee
State Capitol
Sacramento, CA 95814

RE: SB 1301—Reproductive Privacy Act—Removes "physician-only" requirement for abortions—OPPOSE (by Senator Sheila Kuehl)

Dear Senator Escutia:

California ProLife Council, on behalf of its members, respectfully asks that you oppose **SB 1301**, by Senator Sheila Kuehl. **SB 1301** would replace the 1967 Therapeutic Abortion Act with the "Reproductive Privacy Act." From our perspective both of these acts have serious flaws, however our most grave concern with **SB 1301** is the repeal of the requirement that only physicians may do abortions in California. Clear language to assure that only physicians and surgeons are authorized to do abortions in California is a minimum the women of California should expect.

Current law requires in Section 123405 of the Health & Safety Code, that abortions be done by "a holder of the physician's and surgeon's certificate." The operative language left in California law would apparently allow non-physicians to perform "nonsurgical" abortions—such as RU 486, methotrexate, or other drug abortions.

Section 123405 would be replaced with Section 123468 of the Reproductive Privacy Act, which drops the reference to physicians and surgeons and states: "The performance of an abortion is unauthorized if . . . the following is true: (a) The person performing or assisting in performing the abortion is not a health care provider authorized to perform or assist in performing an abortion pursuant to Section 2253 of the Business and Professions Code."

In Sections (b)(1) and (b)(2) of 2253, a distinction is made between surgical and non-surgical abortions. Section (b)(1) allows NON-PHYSICIAN medical professionals with the appropriate certificate (whatever that means) TO ASSIST in the performance of SURGICAL abortions. Section (b)(2) allows NON-PHYSICIAN medical professionals, again with the appropriate certificate, TO PERFORM or assist in performing NON-SURGICAL abortions.

Please oppose SB 1301. It is not in the interest of the women of California to lower the standard of qualifications necessary for the performance of abortions. At a minimum, a clear provision requiring that all abortions be done by physicians and surgeons should be restored.

Sincerely,

Janet B. Carroll

Mrs. Janet B. Carroll
Legislative Analyst

California ProLife Council, Inc.
The California Affiliate of the National Right to Life Committee
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Is this new law going to hamper or hinder a reform of this industry, to practice consonant with what most reasonable people would expect?

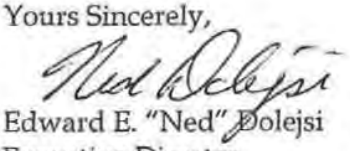
With this new statutory designation, you, and all members of the Legislature, could possibly preclude any local control reflective of community mores. For example, with this law a local hospital district would have no choice but to offer abortions at their community facilities, and local school districts could not refrain from offering abortion and contraceptive services at their schools, with or without a parent's permission. This law may even possibly repeal, by implication, the only two remaining pieces of the current law.

The Catholic Church consistently opposes abortion. Although we understand that abortion-on-demand is legal and practiced in California, we are directing our efforts toward advocating common sense restrictions on abortion practices that would mitigate its ill effects on women, children and society as a whole. Unfortunately, even a level of oversight and restriction that most people view as reasonable and necessary would be precluded by the provisions of this act. Under this law, there would be the possibility that someone other than a physician could perform a "non-surgical" abortion. There would be no ability to limit abortion when a fetus is definitely viable, even in the ninth month! With this new law, what is moral when it comes to destroying life is to be decided solely by each individual.

Even though we view abortion as immoral and will not support any version of legal abortion, we ask that you revise SB 1301 to require that California's abortion practice be subject to the same common sense restrictions and oversight already imposed on other medical facilities.

Thank you for your diligent work in these interesting times. Should you have any questions regarding our position, please contact Carol Hogan or myself at (916) 443-4851.

Yours Sincerely,



Edward E. "Ned" Dolejsi
Executive Director

cc: Members of the Senate Judiciary Committee
Senator Sheila Kuehl, author
Claudia Wrazel, consultant

/lp

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APR - 8 2002

CALIFORNIA
CATHOLIC
CONFERENCE

ARCHDIOCESES OF LOS ANGELES AND SAN FRANCISCO
DIOCESES OF FRESNO, MONTEREY, OAKLAND, ORANGE, SACRAMENTO, SAN BERNARDINO, SAN DIEGO, SAN JOSE, SANTA ROSA AND STOCKTON
BYZANTINE CATHOLIC EPARCHY OF VAN NUYS, MARONITE CATHOLIC EPARCHY OF OUR LADY OF LEBANON OF LOS ANGELES

April 3, 2002

Honorable Martha Escutia
Chair, Senate Judiciary Committee
California State Capitol, Room 5080
Sacramento, CA 95814

RE: SB 1301 (Kuehl) Reproductive Privacy Act

Dear Senator Escutia,

The California Catholic Conference opposes SB 1301.

The "Therapeutic Abortion Act" is still in the statute books for California and most citizens in this state think that it is a reasonable law that reflects current abortion practice. However, except for the requirement that a licensed physician perform an abortion and the "conscience clause" exemption for practitioners, the Courts have judged much of the entire 1971 Act unconstitutional.

SB 1301 would explicitly make "abortion-on-demand" legal in California, signaling a dramatic change in the status of abortion law—from not banned to affirmed. SB 1301 would delineate that California not only permits abortion to be practiced without restrictions, but that California legally enshrines it as good public practice and policy. SB 1301 would rename the law the "Reproductive Privacy Act," thereby equating surgical abortion with other issues classified as "reproductive," such as contraception, sterilization, infertility, and even cloning.

Most abortions in California do not take place in hospitals but are performed in abortion clinics. However these clinics, unlike all other freestanding medical clinics, have been exempted from the Department of Health Services regulations, a puzzling and dangerous situation for women undergoing an abortion. If abortion is legal, why do women receive this shoddy treatment? Are these women not entitled to a safe, clean and regulated surgical environment?

Compounding this regulations oversight, no abortion statistics are kept. Californians do not know the number of abortions performed in their state, the number and type of identifiable complications resulting from the procedure, or the frequency of emergency admissions following the procedure. In other words, abortion clinics are exempted from keeping the same statistics that are expected and kept by other medical clinics regarding their medical procedures. Many identifiable fertility problems can be traced directly to abortion, yet in California we neither gather the pertinent data nor make women aware of the possible correlation.

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woman's right to choose or obtain an abortion prior to viability of the fetus, or when the abortion is necessary to preserve the life or health of the woman."

This alteration in the law would allow for abortions up unto the point of birth. There would no longer be a distinction in California law against virtual infanticide conducted through partial-birth abortions. Rather, the very broad language of Roe v. Wade would be implemented whereby a woman in labor would be allowed to abort her child.

Where is the state's interest in legalizing the killing of children who are clearly viable in the late stages of pregnancy? There is no state interest!!

For these reasons, we most respectfully request your "NO" vote on SB 1301.

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CHAIRMAN
Rev. Louis P. Sheldon

TO: Honorable State Senators
Senate Judiciary Committee

FROM: Rev. Louis P. Sheldon, Chairman
Benjamin Lopez, California Legislative Analyst

Date: April 8, 2002

RE: **SB 1301—KUEHL** **OPPOSE**

On behalf of its 8,300 member churches in California, Traditional Values Coalition stands in opposition to SB 1301 for the following reasons:

1. **SB 1301 would dangerously allow for non-physicians to perform abortions, posing potential threats to the welfare of women seeking abortions.**

   This piece of legislation would replace the 1967 Therapeutic Abortion Act with the "Reproductive Privacy Act," which would remove an important provision in current law.

   Current law requires that an abortion be done by "a holder of the physician's and surgeon's certificate." This requirement would be replaced with vague language that would allow non-physicians to perform "nonsurgical" abortions.

   The language is so vague that almost anyone in the medical field would qualify to perform so-called "nonsurgical" abortions.

   This provision would not constitute the so-called "safe and legal abortion" that even many in the pro-choice community demand! This would open the floodgates for countless botched abortions being performed on women who otherwise are under the impression that the person conducting the procedure is accurately trained and charged to do so. This is not sound legislation! The state should be in the interest of protecting women's health, not jeopardizing it.

2. **This bill paves the way for late-term, partial-birth abortions.**

   Current law also states that no abortion be performed "after the 20th week of pregnancy." However, SB 1301 would strike this necessary provision and replace it with the following language stating, *"the state may not deny or interfere with a*

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People v. Barksdale , 8 Cal.3d 320

[Crim. No. 15866. Supreme Court of California. November 22, 1972.]

THE PEOPLE, Plaintiff and Appellant, v. ROBERT W. BARKSDALE, Defendant and Respondent

In Bank. (Opinion by Wright, C. J., with Peters, Tobriner and Mosk, JJ., concurring. Separate dissenting and concurring opinion by Burke, J., with McComb and Sullivan, JJ., concurring.) **[8 Cal.3d 321]**

COUNSEL

Evelle J. Younger, Attorney General, Edward A. Hinz, Jr., Chief Assistant Attorney General, William E. James, Assistant Attorney General, Edward P. O'Brien, Charles R. B. Kirk and Derald E. Granberg, Deputy Attorneys General, for Plaintiff and Appellant.

Musick, Peeler & Garrett, James E. Ludlam, Robert D. Girard, Hassard, Bonnington, Rogers & Huber, Howard Hassard, Lawrence W. Kessenick and James F. Kemp as Amici Curiae on behalf of Plaintiff and Appellant.

Mintz, Giller, Himmelman & Mintz, Herman W. Mintz and Morton B. Goldstein for Defendant and Respondent.

A. L. Wirin, Fred Okrand, Roy Lucas, Barbara Ashley Phillips, Pat Kowitz, Joan K. Bradford, Zad Leavy, Levinson, Rowen, Klein & Leavy, Norma G. Zarky, Alan F. Charles, Johnson C. Montgomery, Laurence R. Sperber, Paul N. Halvonik, Charles C. Marson, Terry J. Hatter, Jerome Levine, Roblin J. Williamson, Roland E. Brandel, August B. Rothschild, Jr., and Judith G. Kleinberg as Amici Curiae on behalf of Defendant and Respondent.

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Walter R. Trinkaus, J. J. Brandlin, James E. Ryan, Ray E. McAllister, Andrews, Andrews, Thaxter & Jones, John F. Duff, Richard G. Logan, Curran, Golden, McDevitt & Martin and William R. Kennedy as Amici Curiae.

OPINION

WRIGHT, C. J.

The People seek to prosecute a licensed physician for a violation of Penal Code section 274 (abortion). (Amended Stats. 1967, ch. 327, § 3.) At issue is the constitutionality of the 1967 Therapeutic Abortion Act. (Health & Saf. Code, §§ 25950-25954.) fn. 1

California has traditionally authorized abortions in limited circumstances. Under the terms of the 1967 enactment abortions became more readily available where supported by administrative determinations of the existence of particular circumstances. We are thus confronted not with the question whether the state should or must allow abortions but, rather, whether the current legislation satisfies various constitutional tests against which it must be measured. We hold that it does so only in part and dispose of the cause accordingly. **[8 Cal.3d 325]**

Defendant's demurrer to the complaint charging a violation of Penal Code section 274 was sustained by the magistrate. The People appealed from the following order of dismissal, and the appellate department of the superior court reversed and certified the cause for further appellate proceedings. (Code Civ. Proc., § 911. See also Cal. Rules of Court, rule 63 (a).) For purposes of our review it has been stipulated that defendant is a licensed physician and surgeon, that the charged abortion was performed during the first trimester (13 weeks) of the woman's pregnancy and that it was not performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals, or in any hospital, as required under current legislation (§ 25951, subd. (a)). We assume that no advance approval of the abortion was made by a committee of a hospital medical staff as no reference thereto was contained in the stipulation.

Penal Code section 274, as amended in 1967, provides: "Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever with intent thereby to procure the miscarriage of such woman, except as provided in the Therapeutic Abortion Act, Chapter 11 (commencing with Section 25950) of Division 20 of the Health and Safety Code, is punishable by imprisonment in the state prison not less than two nor more than five years."

The Therapeutic Abortion Act authorizes licensed physicians and surgeons to perform abortions in accredited hospitals if the abortion is approved in advance by a committee of the hospital's medical staff, which committee is to be established and maintained in accordance with the standards promulgated by the Joint Commission on Accreditation of Hospitals. (§ 25951.) The committee may never consist of fewer than two licensed physicians and surgeons and a committee of three is required "if the proposed termination of pregnancy will occur after the 13th week. ..." (§ 25953.) Unanimous consent is required where the committee consists of no more than three members. (§ 25951, subd. (b).) We will consider later a further provision of the statute which states: "In no event shall the termination be approved [by the committee] after the 20th week of pregnancy." (§ 25953.)

Prior to approving an application for an abortion the committee must find that "[there] is a substantial

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risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother" (§ 25951, subd. (c) (1)), or that "[the] pregnancy resulted from rape or incest" (§ 25951, subd. (c)(2)). **[8 Cal.3d 326]**

The term "mental health," which the committee must find will be gravely impaired by continued pregnancy if it approves termination on that ground, is defined as "mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint." (§ 25954.) It thus appears that rather than defining "mental health" the language purports to define what is deemed to constitute impaired mental health. We will later consider the impact of this language.

Before the committee may approve an application for an abortion for reasons of pregnancy resulting from rape or incest, the application must be submitted to the district attorney for evaluation and a determination of the existence of probable cause to believe that the pregnancy resulted from rape or incest. (Pen. Code, §§ 261, 285.) Procedures for a court review are provided following an adverse determination by the district attorney. (§ 25952.)

Penal Code section 274, in language substantially unchanged between 1850 and 1967, forbade abortions except when necessary to preserve the life of the woman. In 1969, we concluded that the particular language was not susceptible of a clear meaning consistent with legislative intent. (People v. Belous (1969) 71 Cal.2d 954 [80 Cal.Rptr. 354, 458 P.2d 194].) The current enactment is the result of almost a decade of legislative effort to satisfy sharply conflicting social, religious and other interests. fn. 2 We previously concluded in Belous that, in passing the Therapeutic Abortion Act, the Legislature was primarily concerned, not with the protection of the embryo but with the health of the woman involved. (People v. Belous, supra, 71 Cal.2d 954, 964-966, 971.) We noted there that the decision to have an abortion raises at least two fundamental rights of the woman: the right to life and the right to choose whether to bear children. (71 Cal.2d at p. 963.) In the instant case we are urged to declare that women have a constitutional right to abortions and that this right stems from and is protected from governmental intervention by the right to privacy. Under this theory it is urged that the state may regulate abortions only to promote the health of a woman by requiring that an abortion be performed by physicians in a medically approved manner and by proscribing an abortion only in those rare instances where it would constitute a greater hazard to the woman than bearing the pregnancy to term. The People urge, to the contrary, that such a right to privacy, if it exists at all in this context, is offset by a compelling state interest in protecting **[8 Cal.3d 327]** fetuses and embryos. We hold, for reasons hereinafter considered, that the Therapeutic Abortion Act may not be enforced to prohibit abortions not falling within the conceded limits of proper state regulation, and for that reason we need not resolve those issues raised by the claimed right of privacy.

Defendant contends that various provisions of the Therapeutic Abortion Act are so ambiguous that they cannot be constitutionally enforced.

"[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Connally v. General Construction Co. (1926) 269 U.S. 385, 391 [70 L.Ed. 322, 328, 46 S.Ct. 126]; see also Cramp v. Board of Public Instruction (1961) 368 U.S. 278, 287 [7 L.Ed.2d 285, 292, 82 S.Ct. 275]; Bouie v. City of Columbia (1964) 378 U.S. 347, 351-352 [12 L.Ed.2d 894, 898-899, 84 S.Ct. 1697]; People v. McCaughan (1957) 49 Cal.2d 409, 414 [317 P.2d 974].) Where the requisite certainty is not apparent on the face of the statute the deficiency may be satisfied by "common understanding and practices" (United States v. Petrillo (1947) 332 U.S. 1, 8 [91

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L.Ed. 1877, 1883, 67 S.Ct. 1538]; see Roth v. United States (1957) 354 U.S. 476, 491 [1 L.Ed.2d 1498, 1511, 77 S.Ct. 1304]) "or from any demonstrably established technical or common law meaning of the language in question" (In re Newbern (1960) 53 Cal.2d 786, 792 [3 Cal.Rptr. 364, 350 P.2d 116]). Although it is inevitable that there will be "some matter of degree" involved in most penal statutes (Nash v. United States (1913) 229 U.S. 373, 377 [57 L.Ed. 1232, 1235, 33 S.Ct. 780]), "stricter standards of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect" on fundamental rights (Smith v. California (1959) 361 U.S. 147, 151 [4 L.Ed.2d 205, 210, 80 S.Ct. 215]; see also Cramp v. Board of Public Instruction, supra, 368 U.S. 278, 287-288 [7 L.Ed.2d 285, 292-293]).

While the basic standard against which statutes must be measured for vagueness is a constant, the vigor with which that standard is applied varies with the determination whether a constitutionally protected right is involved. We have heretofore concluded that two such rights are raised in the decision to seek an abortion. However, as will be seen, at least two provisions of the Therapeutic Abortion Act are so imprecise that we would be compelled to conclude that they are impermissibly vague even were no areas of constitutional protection involved.

The almost universal ground upon which committee approval of an abortion has been granted is on a finding that there "is substantial risk **[8 Cal.3d 328]** that continuance of the pregnancy would gravely impair the physical or mental health of the mother." (§ 25951, subd. (c)(1).) "Risk" means "Hazard; danger; peril; exposure to loss, injury, disadvantage, or destruction. ..." (Webster's New Internat. Dict. (2d ed. 1948, unabridged).) "Substantial" is defined in part as "not seeming or imaginary; not illusive; real; true ... considerable in amount, value, or the like ... firmly established; solidly based ..." (Webster's New Internat. Dict., supra). We have recognized that it is a relative term and that its meaning must be drawn from the circumstances. (Atchison etc. Ry. Co. v. King's Co. Water Dist. (1956) 47 Cal.2d 140, 144 [302 P.2d 1].) In the instant case we need not resolve defendant's contention that the phrase "substantial risk" is so ambiguous that, standing alone, it suffers constitutional infirmities for vagueness. fn. 3 Even if we deem the phrase to establish a proper measure of the probability of impairment, we are nevertheless unable for reasons which follow to ascertain what degree of impairment must result from a continuance of pregnancy in order to "gravely impair" a prospective abortee's health. For these reasons the statutory language is void for vagueness.

"Impair" means to "make worse; to diminish in quantity, value, excellence, or strength." "Gravely" means "in a grave or serious manner." (Webster's New Internat. Dict., supra.) Certainly a pregnant woman's **[8 Cal.3d 329]** health would be gravely impaired if death were to result from her pregnancy, and it cannot be denied that there is a significant death rate associated with childbirth. fn. 4 During the early stages of pregnancy, a hospital abortion is four to six times safer for the woman than is bearing the pregnancy to term. (Dept. Public Health, Fourth Annual Rep. on the Implementation of the Cal. Therapeutic Abortion Act (1971) p. 3; fn. 5 see also, People v. Belous, supra, 71 Cal.2d 954, 965.) Aside from pregnancies resulting in deaths, a normal pregnancy to term with only the normal demands on a woman's body would be deemed by many of common intelligence to seriously worsen her health or "diminish [it] in quantity, value, excellence, or strength." Many individuals would conclude that absent exceptional medical circumstances, continued normal pregnancy to full term imposes such a grave impairment to health that abortion should be available as a matter of routine during at least the first trimester. In Belous we suggested that this was a correct interpretation: "Thus, the test established is a medical one, whether the pregnant woman's physical and mental health will be furthered by abortion or by bearing the child to term. ..." (71 Cal.2d at p. 971.)

It seems more probable, however, that the legislative intent was to require some impairment to health

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greater or of a different nature than that attendant upon normal pregnancy before the committee could approve an application for an abortion for reasons of risk of impaired health. If so, the standard remains equally obscure. It is almost axiomatic that a woman not desiring to continue a pregnancy is subject for psychological reasons to greater impairment of health than a happy pregnant woman. Is this the requisite increased impairment or is the statute intended to require some further, undefined, mathematical measure of diminished health? It is possible that the Legislature did not intend to refer to a variation from the norm, but rather to some definite probability, again unspecified, of mishap. Whatever the nature of the impairment intended by the Legislature the degree thereof which renders it as grave must be resolved in light of the fact that we are dealing with a woman's health. Persons of common intelligence in significant numbers will agree that the slightest impairment of health is of grave concern while others of like intelligence may demand considerably more. In any event, we are unable **[8 Cal.3d 330]** to ascertain within the meaning of the statute either the nature of the diminished health required or that degree of diminution which stamps it as gravely impaired. [2] We can only conclude that on its face the "gravely impair" requirement is impermissibly vague in its present context.

As we have noted, the continued pregnancy must create a substantial risk of gravely impaired physical or "mental health" before the committee can approve an application for an abortion for medical reasons. The term "mental health," as employed in the context of the statute, is also claimed to create impermissible ambiguities. Its definition as a "mental illness to the extent that the woman is dangerous to herself or to the person or property of others or is in need of supervision or restraint" (§ 25954) appears to be, with only minor modifications, a statement of the former standard for involuntary commitment to a mental institution. fn. 6 We are concerned, however, not with the specific parts of the definition but with the obvious error in defining mental health as its own antithesis: mental illness. When section 25954 is read with the appropriate portions of section 25951, one discovers that abortions may be approved if there is a substantial risk that continuance of the pregnancy would gravely impair the mental illness of the woman to the extent that she is dangerous to herself or to the person or property of others or is in need of supervision or restraint. The clear dictate of this provision is that the woman must already be dangerous or in need of supervision or restraint, and in danger of a further aggravation of her condition. Such a construction, however, is probably not consistent with the legislative intent. It is more likely that the Legislature did not intend to require any preexisting derangement, but the wording of the provision clearly states that it is mental illness, not mental health, which must be worsened. Unquestionably men of both common and uncommon intelligence have been forced to speculate on the meaning of this provision.

Soon after the Therapeutic Abortion Act was adopted, it was suggested that the test committee members must apply was stricter than that for commitment. (Leavy & Charles, California's New Therapeutic Abortion Act: An Analysis and Guide to Medical and Legal Procedure (1967) 15 U.C.L.A. L.Rev. 1, 8.) In practice, however, in 1970, 63,872 abortions were approved in California and 61,572 were performed, both figures **[8 Cal.3d 331]** representing 98.2 percent of all approvals and all abortions, for reasons of mental health. fn. 7 Serious doubt must exist that such a considerable number of pregnant women could have been committed to a mental institution. Either pregnancy carries risks to mental health beyond those ever imagined, or legal writers and members of therapeutic abortion committees, two groups we must assume to be of at least common intelligence, have been forced to guess at the meaning of this provision and have reached radically different interpretations.

That the language establishing the permissible medical indications for abortion is vague is further attested to by widespread complaints of uncertainty in the medical profession. (Final Rep. of the Ad Hoc Committee on Therapeutic Abortions of the Cal. Medical Assn. House of Delegates (1970) p. 5.)

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This report indicates that the medical community is not only uncertain about the proper interpretation of the law but entertains genuine apprehension that it is called upon to make legal determinations beyond medical competence. (Compare People v. Belous, supra, 71 Cal.2d 954, 971.)

There is further evidence that the Therapeutic Abortion Act has not established meaningful standards for the physicians who must administer it in the wide divergences in ratios of abortions to applications and abortions to live births that have occurred throughout the state. fn. 8 Although **[8 Cal.3d 332]** complete statistics are not available, those figures compiled in the footnote strongly suggest that during the first years of practice under the act the medical criteria were construed and applied differently in various regions of the state. By 1970 committee members had apparently despaired of comprehending the medical criteria and approved virtually all applications for reasons of mental (99 percent) and physical (98.6 percent) health impairment. fn. 9

[3] We are compelled to conclude that the language establishing the medical criteria upon which abortions may be approved is not sufficiently certain to meet minimal standards of due process. (U.S. Const., Amend. XIV, § 1; Cal. Const., art. I, § 13.)

[4a] Further, defendant has standing to raise the question of constitutional infirmity although he personally was not charged with applying the vague standards which would have confronted a medical committee had its approval been sought. In People v. Belous, supra, 71 Cal.2d 954, we noted that under former Penal Code section 274 a physician acted at his peril with each determination to abort a patient. We distinguished responsibility under that section and the Therapeutic Abortion Act, noting that the act "reduces these pressures [upon the physician]. The act specifically authorizes an abortion by a licensed physician ... where the abortion is approved in advance by a committee. ... At least in cases where there has been adherence to the procedural requirements of the statute, physicians may not be held criminally responsible, ..." (71 Cal.2d at pp. 972-973.)

We are not here concerned, of course, with the criminal responsibility of a physician who attempted to comply with the provisions of the act, but rather with the responsibility of a physician who failed to comply on **[8 Cal.3d 333]** the ground that the act, insofar as committee approval for an abortion is concerned, is void and a nullity. If the defendant as a physician has no personal interest in challenging the statute on grounds that it fails fairly to advise of conduct in which he may not engage, a patient seeking an abortion by him certainly has an interest in asserting that the statute fails fairly to advise her of its prohibitions. A woman submitting to an abortion other than as provided in the Therapeutic Abortion Act is herself guilty of a felony. (Pen. Code, § 275.) It is no answer to say that committee approval is the touchstone. Committee approval is intended only to reflect the satisfaction of the statutory requirements. (See Ballard v. Anderson (1971) 4 Cal.3d 873, 884-885 [95 Cal.Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392].) Those requirements must be comprehensible both to the prospective patient and to those charged with the decision whether an abortion may be performed. Where, as here, even the latter are unable to comprehend the import of the standards, the woman clearly may complain of the act. [5] A physician has standing to assert his patient's rights where they may not otherwise be established. (Griswold v. Connecticut (1965) 381 U.S. 479, 481 [14 L.Ed.2d 510, 512, 85 S.Ct. 1678]; Ballard v. Anderson, supra, 4 Cal.3d 873, 877-878.)

[4b] We recognized in Belous the applicability of that rule when asserted in defense to a criminal charge, noting that the defendant physician's standing to raise his patient's rights upon which her entitlement to an abortion was claimed was "unchallenged." (71 Cal.2d at p. 963, fn. 5.) The rule is equally applicable in the instant case.

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Having concluded that the language establishing the medical criteria for approval of abortions is impermissibly vague, we are further compelled either to hold the whole of the Therapeutic Abortion Act invalid or to preserve it in part after excising the invalid portions. [6] "The test of severability is whether the invalid parts of the statute can be severed from the otherwise valid parts without destroying the statutory scheme, or the utility of the remaining provisions. [Citations.]" (Blumenthal v. Board of Medical Examiners (1962) 57 Cal.2d 228, 238 [18 Cal.Rptr. 501, 368 P.2d 101]; Dillon v. Municipal Court (1971) 4 Cal.3d 860, 872 [94 Cal.Rptr. 777, 484 P.2d 945].) The manifest principal legislative intent embodied in the Therapeutic Abortion Act was to provide for abortions under an array of circumstances when they afford an appropriate medical remedy. To invalidate the whole of the act or to preserve it and invalidate only section 25951, subdivision (c)(1), and authorize abortions only when the pregnancy resulted from rape or incest, would clearly thwart that fundamental purpose. The latter course, for instance, would proscribe abortions "where death from childbirth although not medically **[8 Cal.3d 334]** certain, would be substantially certain or more likely than not," a standard we held to be constitutionally impermissible in Belous. (71 Cal.2d at p. 969.) We can only conclude that under the prevailing statute, abortions are available without the necessity of satisfying the criteria purported to be established under section 25951, subdivision (c). As a practical matter, there is little doubt that the act is now being administered in such a fashion.

[7] Those provisions of the Therapeutic Abortion Act establishing the medical committees and their procedures and directing involvement of the district attorneys and courts in cases raising issues of rape and incest have no function independent of the criteria we have held to be invalid. (Cf. Ballard v. Anderson, supra, 4 Cal.3d 873, 884-885.) Without valid criteria for approval, the statutory scheme requiring a mechanism for such approval is destroyed and the procedures lose their viability. (See Dillon v. Municipal Court, supra, 4 Cal.3d 860, 872; Blumenthal v. Board of Medical Examiners, supra, 57 Cal.2d 228, 238.) Thus these portions of the statute must also be held invalid.

[8] Remaining are provisions proscribing the performance of abortions after the 20th week of a pregnancy and requiring that abortions be performed by licensed physicians and surgeons and in hospitals accredited by the Joint Commission on Accreditation of Hospitals. These provisions are distinct from the invalid approval standards and mechanism, bear no necessary relationship thereto and are severable therefrom. (See In re King (1970) 3 Cal.3d 226, 237 [90 Cal.Rptr. 15, 474 P.2d 983]; cf. Danskin v. San Diego Unified School Dist. (1946) 28 Cal.2d 536, 555 [171 P.2d 885].) We turn now to an evaluation of such provisions.

As we have noted, section 25953 provides in part: "In no event shall the termination be approved after the 20th week of pregnancy." The bare language of the statute leaves unclear whether the approval must be obtained within the first 20 weeks or whether the abortion must be performed within that time period. The first suggested interpretation is more strongly suggested. [9] "It is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend. [Citations.]" (Bruce v. Gregory (1967) 65 Cal.2d 666, 673-674 [56 Cal.Rptr. 265, 423 P.2d 193]; see also In re Haines (1925) 195 Cal. 605, 613 [234 P. 883].) It is absurd to suppose that the Legislature intended to allow the performance of an abortion at any time during the course of a pregnancy as long as the woman and the doctor had the foresight to get a precautionary approval during the first 20 weeks. [10] We have no **[8 Cal.3d 335]** doubt that the legislative intent was to require abortions to be performed within 20 weeks of the time of conception. We find further support for this analysis from the evidence before the Legislature that after 20 weeks there is a possibility that the fetus is viable and that an attempt to induce a premature delivery is a possible alternative to abortion when termination of pregnancy is a

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necessary medical course. (See Leavy & Charles, California's New Therapeutic Abortion Act: An Analysis and Guide to Medical and Legal Procedure, supra, 15 U.C.L.A. L.Rev. 1, 11-12.)

[11] Although we have refrained from determining whether the Legislature may establish any criteria limiting the decision to terminate a pregnancy during its earlier stages, we think it unquestionable that such power exists, though nothing mandates its exercise, when the fetus is capable of life independent of the body of the woman. California law appears to be unique in establishing the 20th week as the time for a changed legal relationship, but the present record in no way undermines the legislative determination that 20 weeks is an appropriate time for such a change.

The statutory scheme constitutes a complete and absolute proscription on abortions after the 20th week of a pregnancy. No provision is made for medical emergencies, however dire. In People v. Belous, supra, 71 Cal.2d 954, 969, we noted: "[The] law has always recognized that the pregnant woman's right to life takes precedence over any interest the state may have in the unborn. ... [It] is clear that the state could not forbid a woman to procure an abortion where, to a medical certainty, the result of childbirth would be death. We are also satisfied that the state may not require that degree of risk ... which would prohibit an abortion, where death from childbirth although not medically certain, would be substantially certain or more likely than not." In the instant case we are presented with a first trimester abortion and a record devoid of evidence that might suggest that the legislative determination was constitutionally impermissible. The validity of the 20-week limitation is not at issue.

[12] The requirements that abortions be performed only by licensed physicians and surgeons in hospitals accredited by the Joint Commission on the Accreditation of Hospitals are clearly directed to the quality of medical care. Defendant, himself a licensed physician, concedes that this is a valid basis for state regulation and specifically concedes the validity of requiring abortions to be performed by licensed physicians and surgeons. Such requirement is consistent with the policy of excluding unlicensed persons from the practice of the medical arts. (See Bus. & Prof. Code, §§ 2141, 2141.5.) **[8 Cal.3d 336]**

It would be superfluous to review again those circumstances which demonstrate the high rate of infection and mortality associated with "criminal" or "illegal" abortions. (See People v. Belous, supra, 71 Cal.2d 954, 965-966.) For practical purposes, illegal abortions have been synonymous with nonhospital abortions. Evidence unequivocally points to the risks associated with the performance of abortions in other than a proper surgical environment and supports the requirement that abortions be performed in hospitals.

We are not unmindful that recent experience in the State of New York has indicated that abortions may be performed in clinics with safety comparable to that in hospitals. (Tietze & Lewit, Legal Abortions: Early Medical Complications (Oct. 1971) 3 Family Planning Perspectives, No. 4, p. 6.) fn. 10 This falls far short, however, of providing any constitutional basis for challenging the legislative determination that, consistent with the general welfare, abortions may be performed only in accredited hospitals.

Defendant also challenges the accreditation requirements by which only particular hospitals are designated for the performance of abortions. [13] Although all hospitals in California must be licensed by the State Department of Public Health (§ 1400), the additional requirement has been imposed that hospitals in which abortions are performed be accredited by the Joint Commission on Accreditation of Hospitals. It is urged that this requirement is both an improper delegation of power to a private body and overbroad.

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The Joint Commission on Accreditation of Hospitals is a private group, headquartered in Illinois. Both the federal and state governments have relied upon the standards of the Joint Commission as a guarantee of high quality medical care. fn. 11 (See, 42 U.S.C. §§ 1395x(e)(8), 1395bb (Medicare); **[8 Cal.3d 337]** 22 Cal. Admin. Code, § 51207 (a)(3) (Medi-Cal).) Such reliance upon the standards of professional accrediting bodies is not an unconstitutional delegation of governmental power if it is neither arbitrary, unreasonable, nor discriminatory. (See, e.g., Colorado Polytechnic College v. State Board for Community Colleges and Occupational Education (1970) 173 Colo. 39 [476 P.2d 38]; Green v. City of St. Petersburg (1944) 154 Fla. 339 [17 So.2d 517]; cf. Marjorie Webster Jr. Col. v. Middle States Ass'n of C. & S.S. (1970) 432 F.2d 650, 655-656 [139 App.D.C. 217]; Wallington v. Zinn (1961) 146 W.Va. 147 [118 S.E.2d 526].) Thus, in reality, the considerations bearing upon the propriety of the delegation are substantially similar to those bearing on overbreadth.

We are not aware that the standards of the Joint Commission are specifically related to the existence of facilities relevant to the performance of abortions. fn. 12 We have noted above, however, the high regard in which accreditation is held as a guarantee of the quality of medical care. Existent state practices for licensing hospitals are essentially concerned with the grosser aspects of construction and facilities. (§§ 1400-1426.) The risk of loss of accreditation is an effective guarantee that a hospital will not allow its facilities for the performance of abortions to deteriorate. Further, in a manner virtually unduplicatable by state regulation, the standards of the Joint Commission encourage the best medical practice by providing for ongoing medical review of the qualifications of staff members and of the care given patients. In short, the utilization of these privately developed standards of excellence seems neither arbitrary nor unreasonable.

It is alleged that utilization of the Joint Commission's standards works economic and geographical discriminations. Some counties in the state are apparently without accredited hospitals, in other counties even the county hospital is not accredited, and, it is claimed, individuals are unable to arrange **[8 Cal.3d 338]** for abortions solely because of their economic situation. The record fails to establish that the requirement that hospitals be accredited has prevented any woman from securing an abortion for either geographic or economic reasons. Indeed, we note that by 1970 more than one-third of all abortions were paid for by Medi-Cal.

Abortion is the only medical procedure required by criminal sanctions to be performed in a hospital. Other procedures, including those far more dangerous to the patient, may be performed elsewhere. In practice, medical standards require that such operations be performed in hospitals, though possibly not accredited ones. A state seeking to alleviate a social problem need not choose between attacking every aspect thereof and not attacking it at all. (Dandridge v. Williams (1970) 397 U.S. 471 [25 L.Ed.2d 491, 90 S.Ct. 1153].) As evident herein there has been a long history of abortions performed in inadequate medical surroundings with consequent health risks. fn. 13 [14] Thus historically there is abundant justification for the legislative selection of this particular area as requiring greater qualitative controls than in the case of other medical procedures.

A number of additional contentions have been raised, but they either have been rendered moot by the foregoing, are utterly without merit, or are not shown to be applicable.

[15] We conclude that Penal Code section 274 is valid in its entirety. [16] We perceive no constitutional impediments to Health and Safety Code section 25950, to those portions of section 25951 that require abortions to be performed by holders of physician's and surgeon's certificates in hospitals accrediated by the Joint Commission on Accreditation of Hospitals, and to that portion of

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section 25953 limiting the performance of abortions to the first 20 weeks of pregnancies. [17] Sections 25952 and 25954 are invalid, as are subdivisions (b) and (c) of section 25951 and the first sentence of section 25953.

[18] The complaint filed in the municipal court sufficiently alleges that the charged abortion was not performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals and thus does allege the commission of a public offense. However, due process requirements preclude a determination in the instant case that defendant be convicted of a violation of Penal Code section 274 because of his failure to comply with the Therapeutic Abortion Act. Our conclusion that some of the important portions of the act are and were at the time of the alleged violation **[8 Cal.3d 339]** invalid, rendered it virtually impossible for defendant to comply with the act at the time he performed the abortion. It is now apparent that defendant, a licensed physician, was not required to obtain approval for the abortion from the medical committee at any hospital. However, unless a medical committee at a particular hospital could anticipate our decision herein and recognize that its approval was not necessary to the performance of an abortion at the hospital, defendant could not use the facilities of an accredited hospital. The statute as enacted by the Legislature and until as herein construed by this court gave no adequate notice to defendant of the prohibited conduct or of procedures constituting compliance therewith, and he cannot be properly charged with its violation. The judgment of dismissal, accordingly, should not be disturbed.

The judgment is affirmed.

Peters, J., Tobriner, J., and Mosk, J., concurred.

BURKE, J.,

Concurring and Dissenting.

The problem of abortion is one which has deeply troubled our nation's legislators and courts. It commands the most painstaking consideration of the interests of all involved -- the woman who desires an abortion, the physician who would perform it, the hospital whose facilities would be used, and lastly and of grave importance, the rights of the embryo or fetus itself, viewed by some simply as an appendage of the mother to be removed at will, and by others as a defenseless child with its own rights to protection and life. Inevitably intertwined into the problem are differing, often widely divergent, social, religious, moral and medical attitudes. It is the solemn responsibility of the Legislature to balance and accommodate these various conflicting and competing interests, a task which it accomplished in 1967 with the passage of the Therapeutic Abortion Act. It is the task of the courts to acknowledge and respect this legislative balancing process and to uphold, if at all possible within constitutional limits, the legislative expression of that process.

The period of debate is over, our personal views, probably as divergent as those of the public generally, are set aside. We address ourselves exclusively to the particular legislation before us, and seek to determine its validity solely by reference to those established legal principles available to courts in determining challenges to legislation on grounds of unconstitutionality.

The Therapeutic Abortion Act is the product of seven years of legislative study. fn. 1 Innumerable lengthy hearings were conducted to afford the public **[8 Cal.3d 340]** ample opportunity to express its views; representatives from numerous diverse groups addressed the Legislature and made known their respective opinions, allegiances and advice. Countless drafts of proposed legislation were prepared,

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debated and discarded. fn. 2 This lengthy process of hearings, drafting and debate finally culminated in 1967 with the adoption of the Therapeutic Abortion Act, admittedly compromise legislation designed to accommodate as far as possible the opposing interests. The majority herein nullify the Legislature's seven-year effort by means of a type of constitutional attack which, as I will demonstrate, is not even applicable to this case. I repeat "nullify," for the majority have removed from the abortion procedure the most important protective devices designed to deny a right of abortion simply upon the demand of the mother, a concept flatly rejected by the Legislature.

It is a cardinal principle of law, and one which, I respectfully submit, the majority has failed to apply here, that a statute is presumed to be constitutional unless its unconstitutionality clearly and unmistakably appears; all intendments favor its validity and mere doubt is not a sufficient reason to declare it invalid. (In re Ricky H., 2 Cal.3d 513, 519 [86 Cal.Rptr. 76, 468 P.2d 204]; In re Dennis M., 70 Cal.2d 444, 453 [75 Cal.Rptr. 1, 450 P.2d 296].) The majority invalidate the central provisions of the Therapeutic Abortion Act on the basis of their own doubts that the act's provisions are sufficiently certain to comply with due process requirements. However, in striking down the heart of the act, the majority have misapplied the so-called "void for vagueness" rule, have misunderstood the proper limits of that rule, and have misconstrued the evident legislative intent underlying the act's provisions. I now discuss these separate and distinct errors in the majority's analysis of this case.

1. Health and Safety Code sections 25951 and 25954 are not void for vagueness

a. Section 25951

The pertinent language of subdivision (c) of section 25951, which was adopted from identical language in section 230.3 of the Model Penal Code, requires a finding by the hospital's medical committee that "[there] is substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother." Although the majority claim that they need not resolve the question, they strongly suggest (ante, pp. 327, 328, and fn. 3) that the phrase "substantial risk" is improperly **[8 Cal.3d 341]** uncertain. Further, they also conclude that the words "gravely impair" are impermissibly vague, furnishing an inadequate standard to guide those who must interpret and follow the act's provisions. To the contrary, this court in People v. Belous, 71 Cal.2d 954 [80 Cal.Rptr. 354, 458 P.2d 194], has already acknowledged the validity of the act's provisions in this regard: "The further criteria for determining whether an abortion is permissible is the pregnant woman's physical and mental health. Thus, the test established is a medical one, whether the pregnant woman's physical and mental health will be furthered by abortion or by bearing the child to term, and the assessment does not involve considerations beyond medical competence." (Italics added; 71 Cal.2d at p. 971.)

The majority herein evidently believe, contrary to the court's prior determination in People v. Belous, supra, 71 Cal.2d 954, that the medical staff committee of an accredited hospital will be incompetent to determine what a "substantial" risk is. Yet this court has recently adopted a test in kidnaping cases which requires a determination which is quite similar. In People v. Daniels, 71 Cal.2d 1119 [80 Cal.Rptr. 897, 459 P.2d 225, 43 A.L.R.3d 677], a case filed one month after the Belous decision, we held that in determining whether particular movements of the robbery victim constituted the crime of kidnaping, the test is whether or not the movements "are merely incidental to the commission of the robbery and do not substantially increase the risk of harm over and above that necessarily present in the crime of robbery itself." (71 Cal.2d at p. 1139; italics added.) As stated in a subsequent case, People v. Timmons, 4 Cal.3d 411, 415 [93 Cal.Rptr. 736, 482 P.2d 648], "The true test in each case is not mere mileage but whether the movements of the victims 'substantially increase the risk of harm' .... [The] qualifier ["substantially"] is significant." In Timmons the court recognized that the word

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"substantially" is a relative one, requiring the exercise of judgment, and that the substantiality of a risk of harm will vary from case to case depending upon the particular circumstances. (4 Cal.3d at p. 416, fn. 2.)

If the "substantial risk" language of the Therapeutic Abortion Act is impermissibly vague, then certainly the same language in our own redefinition of kidnaping should be held too vague to serve as a basis for the imposition of the drastic penalties which accompany that crime. Yet, as we made clear in People v. Daniels, supra, 71 Cal.2d 1119, "The law is replete with instances in which a person must, at his peril, govern his conduct by such nonmathematical standards as 'reasonable,' 'prudent,' 'necessary and proper,' 'substantial,' and the like. ... Yet standards of this kind are not impermissibly vague, provided their meaning can be objectively ascertained by reference to common experiences of mankind." **[8 Cal.3d 342]** (Italics added; 71 Cal.2d at pp. 1128-1129; see also People v. Victor, 62 Cal.2d 280, 298-300 [42 Cal.Rptr. 199, 398 P.2d 391].) fn. 3

If the "substantial risk" and "gravely impair" language of Health and Safety Code section 25951 were truly uncertain, and subject to widely conflicting interpretations from hospital to hospital, we would expect the statistics to disclose such a variation. Yet the majority's own figures demonstrate that by 1970 the approval rate was relatively uniform throughout the state. (Ante at p. 331.) The variations in earlier years may be explained by a probable initial reluctance on the part of hospitals in certain areas of the state to sanction a practice which, prior to 1967, was not only a felony under the law but also ran counter to fundamental medical responsibility to protect and preserve the life of the fetus, except for the gravest of reasons (such as the preservation of the life of the mother herself).

Giving the language of Health and Safety Code section 25951 a reasonable, common sense construction, the words "substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother," may be interpreted as requiring an actual (not imaginary, remote or conjectural), medically cognizable risk of serious harm over and above the risk ordinarily associated with childbirth. In the words of the majority, "It seems ... probable ... that the legislative intent was to require some impairment to health greater or of a different nature than that attendant upon normal pregnancy before the committee could approve an application for an abortion for reasons of risk of impaired health." (Ante at p. 329.) Otherwise, an abortion would be permitted in every case, and the Therapeutic Abortion Act's provisions rendered superfluous. Presumably, the determination required under section 25951 would be no different than the routine analysis which every physician must make in deciding whether or not a particular risk justifies a contemplated operative procedure. Of necessity, the language is sufficiently broad to enable the medical staff committee to exercise an amount of discretion in each case. **[8 Cal.3d 343]**

The majority apparently believe the statutory language is too broad to serve as a useful standard; they find it "almost axiomatic" that every woman seeking an abortion is subject to some psychological risks. It is also true, however, that the performance of a successful abortion in itself may result in adverse psychological effects. Thus, that psychological risks may exist in every case does not necessarily indicate that an abortion must be approved in every case. It is the committee's responsibility under the act to determine whether, in a particular case, the usual psychological pressures constitute a substantial risk of impaired mental or physical health, or, for example, whether, under the circumstances of that case, the mother's "physical and mental health will be furthered ... by bearing the child to term ...." (71 Cal.2d at p. 971.)

b. Section 25954

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Thus, we approach the majority's alternative vagueness theory, namely, that the Legislature defined "mental health" as "mental illness." The majority in discussing a different part of the Therapeutic Abortion Act recognize that "'It is a settled principle of statutory interpretation that language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend. [Citations.]'" (Ante at p. 334.) Yet the majority overlook the evident application of that principle to the "mental health" definition in the act. The majority's premise is that the term "mental health" in subdivision (c) of Health and Safety Code section 25951 is defined as "mental illness" in section 25954, thereby resulting in the absurd consequence that an abortion may be approved only if there is a substantial risk that continuance of the pregnancy would gravely impair the mother's mental illness. The majority conclude "[the] clear dictate of this provision is that the woman must already be dangerous or in need of supervision or restraint, and in danger of a further aggravation of her condition." (Ante at p. 330.)

The majority concede, however, as they must, that "[it] is more likely that the Legislature did not intend to require any preexisting derangement ...." (Ante at p. 330.) Indeed, earlier in their opinion, the majority state "[it] thus appears that rather than defining 'mental health' the language [of section 25954] purports to define what is deemed to constitute impaired mental health." (Italics added; ante at p. 326.) Quite obviously, this is precisely what the Legislature intended to do. There is nothing in the Therapeutic Abortion Act, or in prior drafts thereof, suggesting that therapeutic abortions should be available only to mentally ill mothers. The entire thrust of the act is to prevent mental and physical illness which threatens to arise from continued pregnancy. The evident purpose of **[8 Cal.3d 344]** Health and Safety Code section 25954 was, as the majority themselves acknowledge, to define more precisely the type of risk which would justify an abortion, namely, the risk that the woman might become, through continued pregnancy, dangerous to herself or others or in need of supervision or restraint.

As stated in one of the articles cited by the majority, "In one sense, this qualifying section [25954] may just restate the grounds for a mental health abortion, i.e., that there be a substantial risk of grave impairment of mental health. It may have been the legislature's way of saying 'and we really mean it.' ... [It] is incumbent on the doctors to recognize that the Legislature intended to restrict abortions for mental health to serious cases." (Leavy and Charles, supra, 15 U.C.L.A. L.Rev. 1, 8.)

I would conclude that the language of sections 25951, subdivision (c), and 25954 of the Health and Safety Code is not unconstitutionally vague since, as the court previously stated in People v. Belous, supra, 71 Cal.2d 954, the test established "is a medical one [which] ... does not involve considerations beyond medical competence."

2. The "void for vagueness" rule is inapplicable

The majority's sole ground for invalidating the act's provisions regarding the requisite committee finding of substantial risk is that those provisions are impermissibly vague and uncertain, and that it would be a denial of due process to impose criminal penalties under such circumstances. Even if we assume contrary to the foregoing analysis, that the act's "substantial risk" provision is vague and uncertain, I strongly dispute the majority's conclusion that any such uncertainty violates due process in this case.

The majority rely upon a line of cases which hold that "'[A] statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its

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meaning and differ as to its application, violates the first essential of due process of law.'" (Ante at p. 327.) These cases have as their premise the accepted principle that ""No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids ...."" (Italics added; People v. Belous, supra, 71 Cal.2d 954, 960, quoting from an earlier case.)

In People v. Belous, supra, 71 Cal.2d 954, for example, the majority invalidated as unconstitutionally vague former Penal Code section 274, which made it a crime to commit an abortion "unless the same is necessary to preserve [the woman's] life ...." The court deemed the quoted **[8 Cal.3d 345]** language too uncertain to justify the imposition of criminal penalties, stating that "the physician acts at his peril if he determines that the woman is entitled to an abortion. He is subject to prosecution for a felony and to deprivation of his right to practice medicine ... if his decision is wrong." (71 Cal.2d at p. 972.) The court in Belous distinguished the responsibility of the physician under the requirements of Penal Code section 274 from those under the Therapeutic Abortion Act which, the court noted, "reduces these pressures [upon the physician]. The act specifically authorizes an abortion by a licensed physician in an accredited hospital where the abortion is approved in advance by a committee of the medical staff of the hospital, applying medical standards. (Health & Saf. Code, § 25951.) At least in cases where there has been adherence to the procedural requirements of the statute, physicians may not be held criminally responsible, and a jury may not subsequently determine that the abortion was not authorized by statute." (Italics added; 71 Cal.2d at p. 973.)

In other words, unlike the statute attacked in People v. Belous, supra, 71 Cal.2d 954, the Therapeutic Abortion Act does not require the physician to act at his peril and speculate whether he may or may not legally perform an abortion. Instead, he may use whatever standard he, in his professional judgment, may choose in determining whether an abortion should be performed. Thereupon, as Belous points out, all the physician must do under the act is follow the procedural requirements specified in section 25951, namely, obtain advance approval from the hospital's medical staff committee and a finding by that committee that either the requisite substantial risk exists or that the pregnancy resulted from rape or incest. So long as the committee makes the requisite finding and approves the abortion, the physician may perform it in an accredited hospital without fear of criminal prosecution.

To hold, as the majority do, that defendant Barksdale was denied due process by being compelled to guess at what the act required of him is simply bewildering to me. The only persons who are required to interpret and apply the "substantial risk" language are those persons who comprise the medical staff committee of the hospital, and neither the act nor Penal Code section 274 imposes criminal liability for the committee's possible error in appraising the substantiality of the risk to the mother in a particular situation.

The majority attempt to circumvent the foregoing analysis by arguing that Doctor Barksdale had standing to assert his patient's own right to fair notice of the act's requirements. The majority note that the woman who submits to an illegal abortion is herself guilty of a felony. (Pen. Code, **[8 Cal.3d 346]** § 275.) Yet the vagueness theory no more applies to the woman who seeks an abortion than to the doctor who seeks to perform it: Both are unequivocally advised by the act's provisions that they must obtain advance committee approval, accompanied by the committee's finding of the requisite substantial risk, before an abortion may legally be performed. Thus, neither the doctor nor his patient is required to guess at the meaning of the act's provisions at the peril of committing a felony. If they obtain the requisite committee finding and approval, they are insulated from criminal sanction; if they fail to obtain that finding and approval, they will commit a felony if they carry on with the abortion. Thus, any possible uncertainty in the minds of the members of the hospital's medical committee

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regarding the act's requirements could not affect or expand the criminal responsibility of the doctor or his patient.

I concur, of course, with the majority's decision herein to the extent that it upholds those provisions of the act which prohibit abortions from being performed in unaccredited hospitals or by persons who do not hold physician's and surgeon's certificates. By depriving the act, however, of its carefully considered protective devices the majority adopt for this state a policy of abortion at the will of the mother, a concept expressly rejected by the Legislature. I would uphold the act in its entirety.

The order of dismissal should be reversed.

McComb, J., and Sullivan, J., concurred.

FN 1. Unless otherwise indicated, all citations are to the Health and Safety Code.

FN 2. An extensive discussion of the legislative treatment of various proposals for abortion law reform during the years 1961 to 1965 is contained in Sands, The Therapeutic Abortion Act: An Answer to the Opposition (1966) 13 U.C.L.A. L.Rev. 285.

FN 3. Qualifying words like "reasonable" or "substantial" may or may not add certainty in particular contexts. (See People v. Belous, supra, 71 Cal.2d 954, 970.) They make more certain what is particularly proscribed in circumstances where conduct is already criminal in nature. When one is engaged upon a course of conduct which is clearly criminal, the nature of the aggravation by which the law measures the degree of the crime may be defined by such qualifying words. In such instances the wrong-doer cannot be heard to complain on grounds of vagueness as the essential element upon which the void-for-vagueness doctrine rests -- the lack of a fair notice of proscribed conduct -- is itself lacking. (See Note, The Void-For-Vagueness Doctrine In the Supreme Court (1960) 109 U.Pa.L.Rev. 67.) Such is the case of one embarked upon a robbery who may expose himself to a greater penalty if movement of his victim in the accomplishment of the robbery "substantially increased the risk of harm over and above that necessarily present in the crime of robbery itself." (People v. Daniels (1969) 71 Cal.2d 1119, 1139 [80 Cal.Rptr. 897, 459 P.2d 225, 43 A.L.R.3d 677].) On the other hand, and as in the instant case, language which attempts to draw a line separating proscribed conduct from conduct which is either protected or not otherwise proscribed is on dangerous ground when it must depend on qualifying words such as "reasonable" or "substantial" to define the line beyond which proper conduct becomes criminal. In Belous, for instance, we contemplated the sufficiency of language which proscribed abortions except where "'substantially or reasonably' necessary to preserve the life of the mother," and concluded that while the qualifying words in other contexts "may add certainty and avoid other due process objections, in the instant case the implication of such words would merely increase the uncertainty." (71 Cal.2d at p. 970.) Vagueness is predicated in such instance on the lack of fair notice of what is and what is not proscribed in a setting where the conduct is not otherwise criminal.

FN 4. In 1969 the preliminary computation of the maternal death rate was 27.4 per 100.000 live births. (Statistical Abstract of the United States (1971) table 73 at p. 55; see also People v. Belous, supra, 71 Cal.2d 954, 963.)

FN 5. Unless otherwise indicated, statistics for the year 1970 are from this report as either direct excerpts or as the result of simple computations performed employing such statistical excerpts. Statistics for earlier years are from the Department of Public Health, Third Annual Report on the Implementation of the California Therapeutic Abortion Act (1970).

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FN 6. Prior to the adoption of the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.), Welfare and Institutions Code section 5550 provided: "'Mentally ill persons' ... means persons who come within either or both of the following descriptions: (a) Who are of such mental condition that they are in need of supervision, treatment, care, or restraint. (b) Who are of such mental condition that they are dangerous to themselves or to the person or property of others, and are in need of supervision, treatment, care, or restraint. ..." (Italics added to demonstrate changes.)

FN 7. Subsequent to oral argument in this case, the Department of Public Health issued its Fifth Annual Report on the Implementation of the California Therapeutic Abortion Act. We take judicial notice thereof. (Evid. Code, §§ 452, subd. (h), 459.) The number of applications, number of approvals, and the reasons for which abortions are requested, approved, and performed, are no longer provided. The total number of abortions performed climbed to 116,749 in 1971, and the rate rose to 286.7 per 1,000 live births.

FN 8

[Tabular Material Omitted]

1967 1968

In both 1969 and 1970 the San Francisco Bay Area had 22 percent of the state's live births, but 59 percent of the 1969 and 34 percent of the 1970 abortions. The same figures for the Los Angeles area are 44 percent, 19 percent and 44 percent.

FN 9. The legislative history is of no help in resolving the ambiguities. The Legislature apparently sought to bring the abortion law into close alignment with the medical practices of 1967. In its original form the proposed legislation reflected the sponsors' belief that they were doing so. Several amendments were made, however, at least two of which represented retreats from the prevailing medical standards: addition of the definition of mental health (Note, The California Therapeutic Abortion Act: An Analysis (1967) 19 Hastings L.J. 242, 246), and deletion of authorization of an abortion when there was a "substantial risk that the child would be born with a grave physical or mental defect" (Leavy & Charles, California's New Therapeutic Aborton Act: An Analysis and Guide to Medical and Legal Procedure, supra, 15 U.C.L.A. L.Rev. 1, 23; Note, The California Therapeutic Abortion Act: An Analysis, supra, 19 Hastings L.J. 242, 249). The result is that we are not able to turn to the medical standards of 1967 as an aid in determining the meaning of the particular provisions which have disturbed us.

FN 10. Although the Therapeutic Abortion Act does not allow the performance of abortions in nonhospital clinics, it clearly allows the handling of abortions on an outpatient basis. We note that these, too, appear to be as safe as inpatient abortions. (Margolis & Overstreet, Legal Abortion Without Hospitalization (1970) 36 Obstetrics & Gynecology 479; Goldsmith & Margolis, Aspiration Abortion Without Cervical Dilation (1971) 110 Am. J. Obstetrics & Gynecology 580.)

FN 11. We have, on the record before us, only an October 1969 edition of the standards of the Joint Commission. That document establishes the principal functions of the organzation as being:

"1. To establish standards for the operation of hospitals and other health care facilities and services.

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"2. To conduct survey and accreditation programs that will encourage members of the health professions, hospitals and other health care facilities and services voluntarily to a. apply certain basic principles of physical plant safety and maintenance, and of organization and administration of function for efficient care of the patient; b. promote high quality of care in all aspects in order to give patients the optimum benefits that medical science has to offer; and c. maintain the essential services in the facilities through coordinated effort of the organized staffs and the governing bodies of the facilities." (Joint Commission on Accreditation of Hospitals, Standards for Accreditation of Hospitals plus Provisional Interpretations (Oct. 1969) III.)

We are not aware that the commission has promulgated standards governing the establishment and maintenance of therapeutic abortion committees as contemplated by section 25951, subdivision (b).

FN 12. To be eligible for a survey leading to accreditation an applicant must be a state-licensed hospital, a member of or eligible for associate membership in the American Hospital Association, have been in operation for 12 months, meet certain structural and organizational requirements, have certain support services and at least one of the following clinical services: Medicine; Neurology-Psychiatry; Obstetrics-Gynecology; Pediatrics; Surgery. (Joint Commission on Accreditation of Hospitals, Standards for Accreditation of Hospitals plus Provisional Interpretations, supra, p. 109.)

FN 13. We may only conjecture upon the effect of legislative limitations on the availability of abortions as one of the factors leading to the seeking or acceptance of substandard care.

FN 1. Leavy and Charles, California's New Therapeutic Abortion Act: An Analysis and Guide to Medical and Legal Procedure, 15 U.C.L.A. L.Rev. 1.

FN 2. See Sands, The Therapeutic Abortion Act: An Answer to the Opposition, 13 U.C.L.A. L.Rev. 285.

FN 3. The majority (ante, pp. 327, 328, fn. 3) would distinguish Daniels on the basis that the "substantial risk" language in the Therapeutic Abortion Act defines "the line beyond which proper conduct becomes criminal," and thus fails to give "fair notice" as to which abortions are criminal and which are not. The majority have misread the act. As I explain in part 2 hereof, the "substantial risk" criterion is solely for the guidance of the hospital's medical committee in determining whether or not to approve an abortion. Neither the mother nor her doctor is required to guess at the meaning of the term "substantial risk" at the peril of violating the act. So long as the requisite approval is obtained from the committee, neither the mother nor her doctor may be prosecuted. Conversely, if no such advance approval is obtained, the abortion is illegal even though it may be belatedly contended that a substantial risk did exist.

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U.S. Supreme Court

ROE v. WADE, 410 U.S. 113 (1973)

410 U.S. 113

ROE ET AL. v. WADE, DISTRICT ATTORNEY OF DALLAS COUNTY
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
No. 70-18.

Argued December 13, 1971 Reargued October 11, 1972
Decided January 22, 1973

A pregnant single woman (Roe) brought a class action challenging the constitutionality of the Texas criminal abortion laws, which proscribe procuring or attempting an abortion except on medical advice for the purpose of saving the mother's life. A licensed physician (Hallford), who had two state abortion prosecutions pending against him, was permitted to intervene. A childless married couple (the Does), the wife not being pregnant, separately attacked the laws, basing alleged injury on the future possibilities of contraceptive failure, pregnancy, unpreparedness for parenthood, and impairment of the wife's health. A three-judge District Court, which consolidated the actions, held that Roe and Hallford, and members of their classes, had standing to sue and presented justiciable controversies. Ruling that declaratory, though not injunctive, relief was warranted, the court declared the abortion statutes void as vague and overbroadly infringing those plaintiffs' Ninth and Fourteenth Amendment rights. The court ruled the Does' complaint not justiciable. Appellants directly appealed to this Court on the injunctive rulings, and appellee cross-appealed from the District Court's grant of declaratory relief to Roe and Hallford. Held:

1. While 28 U.S.C. 1253 authorizes no direct appeal to this Court from the grant or denial of

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declaratory relief alone, review is not foreclosed when the case is properly before the Court on appeal from specific denial of injunctive relief and the arguments as to both injunctive and declaratory relief are necessarily identical. P. 123.

2. Roe has standing to sue; the Does and Hallford do not. Pp. 123-129.

(a) Contrary to appellee's contention, the natural termination of Roe's pregnancy did not moot her suit. Litigation involving pregnancy, which is "capable of repetition, yet evading review," is an exception to the usual federal rule that an actual controversy [410 U.S. 113, 114] must exist at review stages and not simply when the action is initiated. Pp. 124-125.

(b) The District Court correctly refused injunctive, but erred in granting declaratory, relief to Hallford, who alleged no federally protected right not assertable as a defense against the good-faith state prosecutions pending against him. Samuels v. Mackell, 401 U.S. 66 . Pp. 125-127.

(c) The Does' complaint, based as it is on contingencies, any one or more of which may not occur, is too speculative to present an actual case or controversy. Pp. 127-129.

3. State criminal abortion laws, like those involved here, that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy and other interests involved violate the Due Process Clause of the Fourteenth Amendment, which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy. Though the State cannot override that right, it has legitimate interests in protecting both the pregnant woman's health and the potentiality of human life, each of which interests grows and reaches a "compelling" point at various stages of the woman's approach to term. Pp. 147-164.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician. Pp. 163, 164.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health. Pp. 163, 164.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. Pp. 163-164; 164-165.

4. The State may define the term "physician" to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined. P. 165.

5. It is unnecessary to decide the injunctive relief issue since the Texas authorities will doubtless fully recognize the Court's ruling [410 U.S. 113, 115] that the Texas criminal abortion statutes are unconstitutional. P. 166.

314 F. Supp. 1217, affirmed in part and reversed in part.

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BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and DOUGLAS, BRENNAN, STEWART, MARSHALL, and POWELL, JJ., joined. BURGER, C. J., post, p. 207, DOUGLAS, J., post, p. 209, and STEWART, J., post, p. 167, filed concurring opinions. WHITE, J., filed a dissenting opinion, in which REHNQUIST, J., joined, post, p. 221. REHNQUIST, J., filed a dissenting opinion, post, p. 171.

Sarah Weddington reargued the cause for appellants. With her on the briefs were Roy Lucas, Fred Bruner, Roy L. Merrill, Jr., and Norman Dorsen.

Robert C. Flowers, Assistant Attorney General of Texas, argued the cause for appellee on the reargument. Jay Floyd, Assistant Attorney General, argued the cause for appellee on the original argument. With them on the brief were Crawford C. Martin, Attorney General, Nola White, First Assistant Attorney General, Alfred Walker, Executive Assistant Attorney General, Henry Wade, and John B. Tolle. * [410 U.S. 113, 116]

[Footnote *] Briefs of amici curiae were filed by Gary K. Nelson, Attorney General of Arizona, Robert K. Killian, Attorney General of Connecticut, Ed W. Hancock, Attorney General of Kentucky, Clarence A. H. Meyer, Attorney General of Nebraska, and Vernon B. Romney, Attorney General of Utah; by Joseph P. Witherspoon, Jr., for the Association of Texas Diocesan Attorneys; by Charles E. Rice for Americans United for Life; by Eugene J. McMahon for Women for the Unborn et al.; by Carol Ryan for the American College of Obstetricians and Gynecologists et al.; by Dennis J. Horan, Jerome A. Frazel, Jr., Thomas M. Crisham, and Dolores V. Horan for Certain Physicians, Professors and Fellows of the American College of Obstetrics and Gynecology; by Harriet F. Pilpel, Nancy F. Wechsler, and Frederic S. Nathan for Planned Parenthood Federation of America, Inc., et al.; by Alan F. Charles for the National Legal Program on Health Problems of the Poor et al.; by Marttie L. Thompson for State Communities Aid Assn.; by [410 U.S. 113, 116] Alfred L. Scanlan, Martin J. Flynn, and Robert M. Byrn for the National Right to Life Committee; by Helen L. Buttenwieser for the American Ethical Union et al.; by Norma G. Zarky for the American Association of University Women et al.; by Nancy Stearns for New Women Lawyers et al.; by the California Committee to Legalize Abortion et al.; and by Robert E. Dunne for Robert L. Sassone.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This Texas federal appeal and its Georgia companion, Doe v. Bolton, post, p. 179, present constitutional challenges to state criminal abortion legislation. The Texas statutes under attack here are typical of those that have been in effect in many States for approximately a century. The Georgia statutes, in contrast, have a modern cast and are a legislative product that, to an extent at least, obviously reflects the influences of recent attitudinal change, of advancing medical knowledge and techniques, and of new thinking about an old issue.

We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.

In addition, population growth, pollution, poverty, and racial overtones tend to complicate and not to

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simplify the problem.

Our task, of course, is to resolve the issue by constitutional measurement, free of emotion and of predilection. We seek earnestly to do this, and, because we do, we [410 U.S. 113, 117] have inquired into, and in this opinion place some emphasis upon, medical and medical-legal history and what that history reveals about man's attitudes toward the abortion procedure over the centuries. We bear in mind, too, Mr. Justice Holmes' admonition in his now-vindicated dissent in Lochner v. New York, 198 U.S. 45, 76 (1905):

> "[The Constitution] is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."

I

The Texas statutes that concern us here are Arts. 1191-1194 and 1196 of the State's Penal Code. 1 These make it a crime to "procure an abortion," as therein [410 U.S. 113, 118] defined, or to attempt one, except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the States. 2 [410 U.S. 113, 119]

Texas first enacted a criminal abortion statute in 1854. Texas Laws 1854, c. 49, 1, set forth in 3 H. Gammel, Laws of Texas 1502 (1898). This was soon modified into language that has remained substantially unchanged to the present time. See Texas Penal Code of 1857, c. 7, Arts. 531-536; G. Paschal, Laws of Texas, Arts. 2192-2197 (1866); Texas Rev. Stat., c. 8, Arts. 536-541 (1879); Texas Rev. Crim. Stat., Arts. 1071-1076 (1911). The final article in each of these compilations provided the same exception, as does the present Article 1196, for an abortion by "medical advice for the purpose of saving the life of the mother." 3 [410 U.S. 113, 120]

II

Jane Roe, 4 a single woman who was residing in Dallas County, Texas, instituted this federal action in March 1970 against the District Attorney of the county. She sought a declaratory judgment that the Texas criminal abortion statutes were unconstitutional on their face, and an injunction restraining the defendant from enforcing the statutes.

Roe alleged that she was unmarried and pregnant; that she wished to terminate her pregnancy by an abortion "performed by a competent, licensed physician, under safe, clinical conditions"; that she was unable to get a "legal" abortion in Texas because her life did not appear to be threatened by the continuation of her pregnancy; and that she could not afford to travel to another jurisdiction in order to secure a legal abortion under safe conditions. She claimed that the Texas statutes were unconstitutionally vague and that they abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. By an amendment to her complaint Roe purported to sue "on behalf of herself and all other women" similarly situated.

James Hubert Hallford, a licensed physician, sought and was granted leave to intervene in Roe's action. In his complaint he alleged that he had been arrested previously for violations of the Texas abortion statutes and [410 U.S. 113, 121] that two such prosecutions were pending against him. He

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described conditions of patients who came to him seeking abortions, and he claimed that for many cases he, as a physician, was unable to determine whether they fell within or outside the exception recognized by Article 1196. He alleged that, as a consequence, the statutes were vague and uncertain, in violation of the Fourteenth Amendment, and that they violated his own and his patients' rights to privacy in the doctor-patient relationship and his own right to practice medicine, rights he claimed were guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.

John and Mary Doe, 5 a married couple, filed a companion complaint to that of Roe. They also named the District Attorney as defendant, claimed like constitutional deprivations, and sought declaratory and injunctive relief. The Does alleged that they were a childless couple; that Mrs. Doe was suffering from a "neural-chemical" disorder; that her physician had "advised her to avoid pregnancy until such time as her condition has materially improved" (although a pregnancy at the present time would not present "a serious risk" to her life); that, pursuant to medical advice, she had discontinued use of birth control pills; and that if she should become pregnant, she would want to terminate the pregnancy by an abortion performed by a competent, licensed physician under safe, clinical conditions. By an amendment to their complaint, the Does purported to sue "on behalf of themselves and all couples similarly situated."

The two actions were consolidated and heard together by a duly convened three-judge district court. The suits thus presented the situations of the pregnant single woman, the childless couple, with the wife not pregnant, [410 U.S. 113, 122] and the licensed practicing physician, all joining in the attack on the Texas criminal abortion statutes. Upon the filing of affidavits, motions were made for dismissal and for summary judgment. The court held that Roe and members of her class, and Dr. Hallford, had standing to sue and presented justiciable controversies, but that the Does had failed to allege facts sufficient to state a present controversy and did not have standing. It concluded that, with respect to the requests for a declaratory judgment, abstention was not warranted. On the merits, the District Court held that the "fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment, through the Fourteenth Amendment," and that the Texas criminal abortion statutes were void on their face because they were both unconstitutionally vague and constituted an overbroad infringement of the plaintiffs' Ninth Amendment rights. The court then held that abstention was warranted with respect to the requests for an injunction. It therefore dismissed the Does' complaint, declared the abortion statutes void, and dismissed the application for injunctive relief. 314 F. Supp. 1217, 1225 (ND Tex. 1970).

The plaintiffs Roe and Doe and the intervenor Hallford, pursuant to 28 U.S.C. 1253, have appealed to this Court from that part of the District Court's judgment denying the injunction. The defendant District Attorney has purported to cross-appeal, pursuant to the same statute, from the court's grant of declaratory relief to Roe and Hallford. Both sides also have taken protective appeals to the United States Court of Appeals for the Fifth Circuit. That court ordered the appeals held in abeyance pending decision here. We postponed decision on jurisdiction to the hearing on the merits. 402 U.S. 941 (1971). [410 U.S. 113, 123]

III

It might have been preferable if the defendant, pursuant to our Rule 20, had presented to us a petition for certiorari before judgment in the Court of Appeals with respect to the granting of the plaintiffs' prayer for declaratory relief. Our decisions in Mitchell v. Donovan, 398 U.S. 427 (1970), and Gunn v. University Committee, 399 U.S. 383 (1970), are to the effect that 1253 does not authorize an appeal to this Court from the grant or denial of declaratory relief alone. We conclude, nevertheless, that those

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decisions do not foreclose our review of both the injunctive and the declaratory aspects of a case of this kind when it is properly here, as this one is, on appeal under 1253 from specific denial of injunctive relief, and the arguments as to both aspects are necessarily identical. See Carter v. Jury Comm'n, 396 U.S. 320 (1970); Florida Lime Growers v. Jacobsen, 362 U.S. 73, 80 -81 (1960). It would be destructive of time and energy for all concerned were we to rule otherwise. Cf. Doe v. Bolton, post, p. 179.

IV

We are next confronted with issues of justiciability, standing, and abstention. Have Roe and the Does established that "personal stake in the outcome of the controversy," Baker v. Carr, 369 U.S. 186, 204 (1962), that insures that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution," Flast v. Cohen, 392 U.S. 83, 101 (1968), and Sierra Club v. Morton, 405 U.S. 727, 732 (1972)? And what effect did the pendency of criminal abortion charges against Dr. Hallford in state court have upon the propriety of the federal court's granting relief to him as a plaintiff-intervenor? [410 U.S. 113, 124]

A. Jane Roe. Despite the use of the pseudonym, no suggestion is made that Roe is a fictitious person. For purposes of her case, we accept as true, and as established, her existence; her pregnant state, as of the inception of her suit in March 1970 and as late as May 21 of that year when she filed an alias affidavit with the District Court; and her inability to obtain a legal abortion in Texas.

Viewing Roe's case as of the time of its filing and thereafter until as late as May, there can be little dispute that it then presented a case or controversy and that, wholly apart from the class aspects, she, as a pregnant single woman thwarted by the Texas criminal abortion laws, had standing to challenge those statutes. Abele v. Markle, 452 F.2d 1121, 1125 (CA2 1971); Crossen v. Breckenridge, 446 F.2d 833, 838-839 (CA6 1971); Poe v. Menghini, 339 F. Supp. 986, 990-991 (Kan. 1972). See Truax v. Raich, 239 U.S. 33 (1915). Indeed, we do not read the appellee's brief as really asserting anything to the contrary. The "logical nexus between the status asserted and the claim sought to be adjudicated," Flast v. Cohen, 392 U.S., at 102 , and the necessary degree of contentiousness, Golden v. Zwickler, 394 U.S. 103 (1969), are both present.

The appellee notes, however, that the record does not disclose that Roe was pregnant at the time of the District Court hearing on May 22, 1970, 6 or on the following June 17 when the court's opinion and judgment were filed. And he suggests that Roe's case must now be moot because she and all other members of her class are no longer subject to any 1970 pregnancy. [410 U.S. 113, 125]

The usual rule in federal cases is that an actual controversy must exist at stages of appellate or certiorari review, and not simply at the date the action is initiated. United States v. Munsingwear, Inc., 340 U.S. 36 (1950); Golden v. Zwickler, supra; SEC v. Medical Committee for Human Rights, 404 U.S. 403 (1972).

But when, as here, pregnancy is a significant fact in the litigation, the normal 266-day human gestation period is so short that the pregnancy will come to term before the usual appellate process is complete. If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied. Our law should not be that rigid. Pregnancy often comes more than once to the same woman, and in the general population, if man is to survive, it will always be with us. Pregnancy provides a classic justification for a conclusion of nonmootness. It truly could be "capable of repetition, yet evading review." Southern Pacific Terminal Co. v. ICC, 219

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U.S. 498, 515 (1911). See Moore v. Ogilvie, 394 U.S. 814, 816 (1969); Carroll v. Princess Anne, 393 U.S. 175, 178 -179 (1968); United States v. W. T. Grant Co., 345 U.S. 629, 632 -633 (1953).

We, therefore, agree with the District Court that Jane Roe had standing to undertake this litigation, that she presented a justiciable controversy, and that the termination of her 1970 pregnancy has not rendered her case moot.

B. Dr. Hallford. The doctor's position is different. He entered Roe's litigation as a plaintiff-intervenor, alleging in his complaint that he:

> "[I]n the past has been arrested for violating the Texas Abortion Laws and at the present time stands charged by indictment with violating said laws in the Criminal District Court of Dallas County, Texas to-wit: (1) The State of Texas vs. [410 U.S. 113, 126] James H. Hallford, No. C-69-5307-IH, and (2) The State of Texas vs. James H. Hallford, No. C-69-2524-H. In both cases the defendant is charged with abortion . . . ."

In his application for leave to intervene, the doctor made like representations as to the abortion charges pending in the state court. These representations were also repeated in the affidavit he executed and filed in support of his motion for summary judgment.

Dr. Hallford is, therefore, in the position of seeking, in a federal court, declaratory and injunctive relief with respect to the same statutes under which he stands charged in criminal prosecutions simultaneously pending in state court. Although he stated that he has been arrested in the past for violating the State's abortion laws, he makes no allegation of any substantial and immediate threat to any federally protected right that cannot be asserted in his defense against the state prosecutions. Neither is there any allegation of harassment or bad-faith prosecution. In order to escape the rule articulated in the cases cited in the next paragraph of this opinion that, absent harassment and bad faith, a defendant in a pending state criminal case cannot affirmatively challenge in federal court the statutes under which the State is prosecuting him, Dr. Hallford seeks to distinguish his status as a present state defendant from his status as a "potential future defendant" and to assert only the latter for standing purposes here.

We see no merit in that distinction. Our decision in Samuels v. Mackell, 401 U.S. 66 (1971), compels the conclusion that the District Court erred when it granted declaratory relief to Dr. Hallford instead of refraining from so doing. The court, of course, was correct in refusing to grant injunctive relief to the doctor. The reasons supportive of that action, however, are those expressed in Samuels v. Mackell, supra, and in Younger v. [410 U.S. 113, 127] Harris, 401 U.S. 37 (1971); Boyle v. Landry, 401 U.S. 77 (1971); Perez v. Ledesma, 401 U.S. 82 (1971); and Byrne v. Karalexis, 401 U.S. 216 (1971). See also Dombrowski v. Pfister, 380 U.S. 479 (1965). We note, in passing, that Younger and its companion cases were decided after the three-judge District Court decision in this case.

Dr. Hallford's complaint in intervention, therefore, is to be dismissed. 7 He is remitted to his defenses in the state criminal proceedings against him. We reverse the judgment of the District Court insofar as it granted Dr. Hallford relief and failed to dismiss his complaint in intervention.

C. The Does. In view of our ruling as to Roe's standing in her case, the issue of the Does' standing in their case has little significance. The claims they assert are essentially the same as those of Roe, and they attack the same statutes. Nevertheless, we briefly note the Does' posture.

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Their pleadings present them as a childless married couple, the woman not being pregnant, who have no desire to have children at this time because of their having received medical advice that Mrs. Doe should avoid pregnancy, and for "other highly personal reasons." But they "fear . . . they may face the prospect of becoming [410 U.S. 113, 128] parents." And if pregnancy ensues, they "would want to terminate" it by an abortion. They assert an inability to obtain an abortion legally in Texas and, consequently, the prospect of obtaining an illegal abortion there or of going outside Texas to some place where the procedure could be obtained legally and competently.

We thus have as plaintiffs a married couple who have, as their asserted immediate and present injury, only an alleged "detrimental effect upon [their] marital happiness" because they are forced to "the choice of refraining from normal sexual relations or of endangering Mary Doe's health through a possible pregnancy." Their claim is that sometime in the future Mrs. Doe might become pregnant because of possible failure of contraceptive measures, and at that time in the future she might want an abortion that might then be illegal under the Texas statutes.

This very phrasing of the Does' position reveals its speculative character. Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unpreparedness for parenthood, and possible future impairment of health. Any one or more of these several possibilities may not take place and all may not combine. In the Does' estimation, these possibilities might have some real or imagined impact upon their marital happiness. But we are not prepared to say that the bare allegation of so indirect an injury is sufficient to present an actual case or controversy. Younger v. Harris, 401 U.S., at 41 -42; Golden v. Zwickler, 394 U.S., at 109 -110; Abele v. Markle, 452 F.2d, at 1124-1125; Crossen v. Breckenridge, 446 F.2d, at 839. The Does' claim falls far short of those resolved otherwise in the cases that the Does urge upon us, namely, Investment Co. Institute v. Camp, 401 U.S. 617 (1971); Data Processing Service v. Camp, 397 U.S. 150 (1970); [410 U.S. 113, 129] and Epperson v. Arkansas, 393 U.S. 97 (1968). See also Truax v. Raich, 239 U.S. 33 (1915).

The Does therefore are not appropriate plaintiffs in this litigation. Their complaint was properly dismissed by the District Court, and we affirm that dismissal.

V

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras, see Griswold v. Connecticut, 381 U.S. 479 (1965); Eisenstadt v. Baird, 405 U.S. 438 (1972); id., at 460 (WHITE, J., concurring in result); or among those rights reserved to the people by the Ninth Amendment, Griswold v. Connecticut, 381 U.S., at 486 (Goldberg, J., concurring). Before addressing this claim, we feel it desirable briefly to survey, in several aspects, the history of abortion, for such insight as that history may afford us, and then to examine the state purposes and interests behind the criminal abortion laws.

VI

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are

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not of ancient or even of common-law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century. [410 U.S. 113, 130]

1. Ancient attitudes. These are not capable of precise determination. We are told that at the time of the Persian Empire abortifacients were known and that criminal abortions were severely punished. 8 We are also told, however, that abortion was practiced in Greek times as well as in the Roman Era, 9 and that "it was resorted to without scruple." 10 The Ephesian, Soranos, often described as the greatest of the ancient gynecologists, appears to have been generally opposed to Rome's prevailing free-abortion practices. He found it necessary to think first of the life of the mother, and he resorted to abortion when, upon this standard, he felt the procedure advisable. 11 Greek and Roman law afforded little protection to the unborn. If abortion was prosecuted in some places, it seems to have been based on a concept of a violation of the father's right to his offspring. Ancient religion did not bar abortion. 12

2. The Hippocratic Oath. What then of the famous Oath that has stood so long as the ethical guide of the medical profession and that bears the name of the great Greek (460(?)-377(?) B. C.), who has been described [410 U.S. 113, 131] as the Father of Medicine, the "wisest and the greatest practitioner of his art," and the "most important and most complete medical personality of antiquity," who dominated the medical schools of his time, and who typified the sum of the medical knowledge of the past? 13 The Oath varies somewhat according to the particular translation, but in any translation the content is clear: "I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion," 14 or "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy." 15

Although the Oath is not mentioned in any of the principal briefs in this case or in Doe v. Bolton, post, p. 179, it represents the apex of the development of strict ethical concepts in medicine, and its influence endures to this day. Why did not the authority of Hippocrates dissuade abortion practice in his time and that of Rome? The late Dr. Edelstein provides us with a theory: 16 The Oath was not uncontested even in Hippocrates' day; only the Pythagorean school of philosophers frowned upon the related act of suicide. Most Greek thinkers, on the other hand, commended abortion, at least prior to viability. See Plato, Republic, V, 461; Aristotle, Politics, VII, 1335b 25. For the Pythagoreans, however, it was a matter of dogma. For them the embryo was animate from the moment of conception, and abortion meant destruction of a living being. The abortion clause of the Oath, therefore, "echoes Pythagorean doctrines," [410 U.S. 113, 132] and "[i]n no other stratum of Greek opinion were such views held or proposed in the same spirit of uncompromising austerity." 17

Dr. Edelstein then concludes that the Oath originated in a group representing only a small segment of Greek opinion and that it certainly was not accepted by all ancient physicians. He points out that medical writings down to Galen (A. D. 130-200) "give evidence of the violation of almost every one of its injunctions." 18 But with the end of antiquity a decided change took place. Resistance against suicide and against abortion became common. The Oath came to be popular. The emerging teachings of Christianity were in agreement with the Pythagorean ethic. The Oath "became the nucleus of all medical ethics" and "was applauded as the embodiment of truth." Thus, suggests Dr. Edelstein, it is "a Pythagorean manifesto and not the expression of an absolute standard of medical conduct." 19

This, it seems to us, is a satisfactory and acceptable explanation of the Hippocratic Oath's apparent rigidity. It enables us to understand, in historical context, a long-accepted and revered statement of medical ethics.

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3. The common law. It is undisputed that at common law, abortion performed before "quickening" - the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy 20 - was not an indictable offense. 21 The absence [410 U.S. 113, 133] of a common-law crime for pre-quickening abortion appears to have developed from a confluence of earlier philosophical, theological, and civil and canon law concepts of when life begins. These disciplines variously approached the question in terms of the point at which the embryo or fetus became "formed" or recognizably human, or in terms of when a "person" came into being, that is, infused with a "soul" or "animated." A loose consensus evolved in early English law that these events occurred at some point between conception and live birth. 22 This was "mediate animation." Although [410 U.S. 113, 134] Christian theology and the canon law came to fix the point of animation at 40 days for a male and 80 days for a female, a view that persisted until the 19th century, there was otherwise little agreement about the precise time of formation or animation. There was agreement, however, that prior to this point the fetus was to be regarded as part of the mother, and its destruction, therefore, was not homicide. Due to continued uncertainty about the precise time when animation occurred, to the lack of any empirical basis for the 40-80-day view, and perhaps to Aquinas' definition of movement as one of the two first principles of life, Bracton focused upon quickening as the critical point. The significance of quickening was echoed by later common-law scholars and found its way into the received common law in this country.

Whether abortion of a quick fetus was a felony at common law, or even a lesser crime, is still disputed. Bracton, writing early in the 13th century, thought it homicide. 23 But the later and predominant view, following the great common-law scholars, has been that it was, at most, a lesser offense. In a frequently cited [410 U.S. 113, 135] passage, Coke took the position that abortion of a woman "quick with childe" is "a great misprision, and no murder." 24 Blackstone followed, saying that while abortion after quickening had once been considered manslaughter (though not murder), "modern law" took a less severe view. 25 A recent review of the common-law precedents argues, however, that those precedents contradict Coke and that even post-quickening abortion was never established as a common-law crime. 26 This is of some importance because while most American courts ruled, in holding or dictum, that abortion of an unquickened fetus was not criminal under their received common law, 27 others followed Coke in stating that abortion [410 U.S. 113, 136] of a quick fetus was a "misprision," a term they translated to mean "misdemeanor." 28 That their reliance on Coke on this aspect of the law was uncritical and, apparently in all the reported cases, dictum (due probably to the paucity of common-law prosecutions for post-quickening abortion), makes it now appear doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.

4. The English statutory law. England's first criminal abortion statute, Lord Ellenborough's Act, 43 Geo. 3, c. 58, came in 1803. It made abortion of a quick fetus, 1, a capital crime, but in 2 it provided lesser penalties for the felony of abortion before quickening, and thus preserved the "quickening" distinction. This contrast was continued in the general revision of 1828, 9 Geo. 4, c. 31, 13. It disappeared, however, together with the death penalty, in 1837, 7 Will. 4 & 1 Vict., c. 85. 6, and did not reappear in the Offenses Against the Person Act of 1861, 24 & 25 Vict., c. 100, 59, that formed the core of English anti-abortion law until the liberalizing reforms of 1967. In 1929, the Infant Life (Preservation) Act, 19 & 20 Geo. 5, c. 34, came into being. Its emphasis was upon the destruction of "the life of a child capable of being born alive." It made a willful act performed with the necessary intent a felony. It contained a proviso that one was not to be [410 U.S. 113, 137] found guilty of the offense "unless it is proved that the act which caused the death of the child was not done in good faith for the purpose only of preserving the life of the mother."

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A seemingly notable development in the English law was the case of Rex v. Bourne, 1939. 1 K. B. 687. This case apparently answered in the affirmative the question whether an abortion necessary to preserve the life of the pregnant woman was excepted from the criminal penalties of the 1861 Act. In his instructions to the jury, Judge Macnaghten referred to the 1929 Act, and observed that that Act related to "the case where a child is killed by a wilful act at the time when it is being delivered in the ordinary course of nature." Id., at 691. He concluded that the 1861 Act's use of the word "unlawfully," imported the same meaning expressed by the specific proviso in the 1929 Act, even though there was no mention of preserving the mother's life in the 1861 Act. He then construed the phrase "preserving the life of the mother" broadly, that is, "in a reasonable sense," to include a serious and permanent threat to the mother's health, and instructed the jury to acquit Dr. Bourne if it found he had acted in a good-faith belief that the abortion was necessary for this purpose. Id., at 693-694. The jury did acquit.

Recently, Parliament enacted a new abortion law. This is the Abortion Act of 1967, 15 & 16 Eliz. 2, c. 87. The Act permits a licensed physician to perform an abortion where two other licensed physicians agree (a) "that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated," or (b) "that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as [410 U.S. 113, 138] to be seriously handicapped." The Act also provides that, in making this determination, "account may be taken of the pregnant woman's actual or reasonably foreseeable environment." It also permits a physician, without the concurrence of others, to terminate a pregnancy where he is of the good-faith opinion that the abortion "is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman."

5. The American law. In this country, the law in effect in all but a few States until mid-19th century was the pre-existing English common law. Connecticut, the first State to enact abortion legislation, adopted in 1821 that part of Lord Ellenborough's Act that related to a woman "quick with child." 29 The death penalty was not imposed. Abortion before quickening was made a crime in that State only in 1860. 30 In 1828, New York enacted legislation 31 that, in two respects, was to serve as a model for early anti-abortion statutes. First, while barring destruction of an unquickened fetus as well as a quick fetus, it made the former only a misdemeanor, but the latter second-degree manslaughter. Second, it incorporated a concept of therapeutic abortion by providing that an abortion was excused if it "shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose." By 1840, when Texas had received the common law, 32 only eight American States [410 U.S. 113, 139] had statutes dealing with abortion. 33 It was not until after the War Between the States that legislation began generally to replace the common law. Most of these initial statutes dealt severely with abortion after quickening but were lenient with it before quickening. Most punished attempts equally with completed abortions. While many statutes included the exception for an abortion thought by one or more physicians to be necessary to save the mother's life, that provision soon disappeared and the typical law required that the procedure actually be necessary for that purpose.

Gradually, in the middle and late 19th century the quickening distinction disappeared from the statutory law of most States and the degree of the offense and the penalties were increased. By the end of the 1950's, a large majority of the jurisdictions banned abortion, however and whenever performed, unless done to save or preserve the life of the mother. 34 The exceptions, Alabama and the District of Columbia, permitted abortion to preserve the mother's health. 35 Three States permitted abortions that were not "unlawfully" performed or that were not "without lawful justification," leaving interpretation

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of those standards to the courts. 36 In [410 U.S. 113, 140] the past several years, however, a trend toward liberalization of abortion statutes has resulted in adoption, by about one-third of the States, of less stringent laws, most of them patterned after the ALI Model Penal Code, 230.3, 37 set forth as Appendix B to the opinion in Doe v. Bolton, post, p. 205.

It is thus apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today. At least with respect to the early stage of pregnancy, and very possibly without such a limitation, the opportunity [410 U.S. 113, 141] to make this choice was present in this country well into the 19th century. Even later, the law continued for some time to treat less punitively an abortion procured in early pregnancy.

6. The position of the American Medical Association. The anti-abortion mood prevalent in this country in the late 19th century was shared by the medical profession. Indeed, the attitude of the profession may have played a significant role in the enactment of stringent criminal abortion legislation during that period.

An AMA Committee on Criminal Abortion was appointed in May 1857. It presented its report, 12 Trans. of the Am. Med. Assn. 73-78 (1859), to the Twelfth Annual Meeting. That report observed that the Committee had been appointed to investigate criminal abortion "with a view to its general suppression." It deplored abortion and its frequency and it listed three causes of "this general demoralization":

> "The first of these causes is a wide-spread popular ignorance of the true character of the crime - a belief, even among mothers themselves, that the foetus is not alive till after the period of quickening.
>
> "The second of the agents alluded to is the fact that the profession themselves are frequently supposed careless of foetal life . . . .
>
> "The third reason of the frightful extent of this crime is found in the grave defects of our laws, both common and statute, as regards the independent and actual existence of the child before birth, as a living being. These errors, which are sufficient in most instances to prevent conviction, are based, and only based, upon mistaken and exploded medical dogmas. With strange inconsistency, the law fully acknowledges the foetus in utero and its inherent rights, for civil purposes; while personally and as criminally affected, it fails to recognize it, [410 U.S. 113, 142] and to its life as yet denies all protection." Id., at 75-76.

The Committee then offered, and the Association adopted, resolutions protesting "against such unwarrantable destruction of human life," calling upon state legislatures to revise their abortion laws, and requesting the cooperation of state medical societies "in pressing the subject." Id., at 28, 78.

In 1871 a long and vivid report was submitted by the Committee on Criminal Abortion. It ended with the observation, "We had to deal with human life. In a matter of less importance we could entertain no compromise. An honest judge on the bench would call things by their proper names. We could do no less." 22 Trans. of the Am. Med. Assn. 258 (1871). It proffered resolutions, adopted by the Association, id., at 38-39, recommending, among other things, that it "be unlawful and unprofessional for any physician to induce abortion or premature labor, without the concurrent opinion of at least one

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respectable consulting physician, and then always with a view to the safety of the child - if that be possible," and calling "the attention of the clergy of all denominations to the perverted views of morality entertained by a large class of females - aye, and men also, on this important question."

Except for periodic condemnation of the criminal abortionist, no further formal AMA action took place until 1967. In that year, the Committee on Human Reproduction urged the adoption of a stated policy of opposition to induced abortion, except when there is "documented medical evidence" of a threat to the health or life of the mother, or that the child "may be born with incapacitating physical deformity or mental deficiency," or that a pregnancy "resulting from legally established statutory or forcible rape or incest may constitute a threat to the mental or physical health of the [410 U.S. 113, 143] patient," two other physicians "chosen because of their recognized professional competence have examined the patient and have concurred in writing," and the procedure "is performed in a hospital accredited by the Joint Commission on Accreditation of Hospitals." The providing of medical information by physicians to state legislatures in their consideration of legislation regarding therapeutic abortion was "to be considered consistent with the principles of ethics of the American Medical Association." This recommendation was adopted by the House of Delegates. Proceedings of the AMA House of Delegates 40-51 (June 1967).

In 1970, after the introduction of a variety of proposed resolutions, and of a report from its Board of Trustees, a reference committee noted "polarization of the medical profession on this controversial issue"; division among those who had testified; a difference of opinion among AMA councils and committees; "the remarkable shift in testimony" in six months, felt to be influenced "by the rapid changes in state laws and by the judicial decisions which tend to make abortion more freely available;" and a feeling "that this trend will continue." On June 25, 1970, the House of Delegates adopted preambles and most of the resolutions proposed by the reference committee. The preambles emphasized "the best interests of the patient," "sound clinical judgment," and "informed patient consent," in contrast to "mere acquiescence to the patient's demand." The resolutions asserted that abortion is a medical procedure that should be performed by a licensed physician in an accredited hospital only after consultation with two other physicians and in conformity with state law, and that no party to the procedure should be required to violate personally held moral principles. 38 Proceedings [410 U.S. 113, 144] of the AMA House of Delegates 220 (June 1970). The AMA Judicial Council rendered a complementary opinion. 39

7. The position of the American Public Health Association. In October 1970, the Executive Board of the APHA adopted Standards for Abortion Services. These were five in number:

> "a. Rapid and simple abortion referral must be readily available through state and local public [410 U.S. 113, 145] health departments, medical societies, or other nonprofit organizations.
>
> "b. An important function of counselling should be to simplify and expedite the provision of abortion services; it should not delay the obtaining of these services.
>
> "c. Psychiatric consultation should not be mandatory. As in the case of other specialized medical services, psychiatric consultation should be sought for definite indications and not on a routine basis.
>
> "d. A wide range of individuals from appropriately trained, sympathetic volunteers to highly skilled physicians may qualify as abortion counselors.

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"e. Contraception and/or sterilization should be discussed with each abortion patient." Recommended Standards for Abortion Services, 61 Am. J. Pub. Health 396 (1971).

Among factors pertinent to life and health risks associated with abortion were three that "are recognized as important":

"a. the skill of the physician,

"b. the environment in which the abortion is performed, and above all

"c. the duration of pregnancy, as determined by uterine size and confirmed by menstrual history." Id., at 397.

It was said that "a well-equipped hospital" offers more protection "to cope with unforeseen difficulties than an office or clinic without such resources. . . . The factor of gestational age is of overriding importance." Thus, it was recommended that abortions in the second trimester and early abortions in the presence of existing medical complications be performed in hospitals as inpatient procedures. For pregnancies in the first trimester, [410 U.S. 113, 146] abortion in the hospital with or without overnight stay "is probably the safest practice." An abortion in an extramural facility, however, is an acceptable alternative "provided arrangements exist in advance to admit patients promptly if unforeseen complications develop." Standards for an abortion facility were listed. It was said that at present abortions should be performed by physicians or osteopaths who are licensed to practice and who have "adequate training." Id., at 398.

8. The position of the American Bar Association. At its meeting in February 1972 the ABA House of Delegates approved, with 17 opposing votes, the Uniform Abortion Act that had been drafted and approved the preceding August by the Conference of Commissioners on Uniform State Laws. 58 A. B. A. J. 380 (1972). We set forth the Act in full in the margin. 40 The [410 U.S. 113, 147] Conference has appended an enlightening Prefatory Note. 41

VII

Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the 19th century and to justify their continued existence. [410 U.S. 113, 148]

It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. 42 The appellants and amici contend, moreover, that this is not a proper state purpose at all and suggest that, if it were, the Texas statutes are overbroad in protecting it since the law fails to distinguish between married and unwed mothers.

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. 43 This was particularly true prior to the [410 U.S. 113, 149] development of antisepsis. Antiseptic techniques, of course, were based on discoveries by Lister, Pasteur, and others first announced in 1867, but were not generally accepted and employed until about the turn of the century. Abortion mortality was high. Even after 1900, and perhaps until as late as the development of antibiotics in the 1940's, standard modern

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techniques such as dilation and curettage were not nearly so safe as they are today. Thus, it has been argued that a State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy.

Modern medical techniques have altered this situation. Appellants and various amici refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of the first trimester, although not without its risk, is now relatively safe. Mortality rates for women undergoing early abortions, where the procedure is legal, appear to be as low as or lower than the rates for normal childbirth. 44 Consequently, any interest of the State in protecting the woman from an inherently hazardous procedure, except when it would be equally dangerous for her to forgo it, has largely disappeared. Of course, important state interests in the areas of health and medical standards do remain. [410 U.S. 113, 150] The State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is performed under circumstances that insure maximum safety for the patient. This interest obviously extends at least to the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that might arise. The prevalence of high mortality rates at illegal "abortion mills" strengthens, rather than weakens, the State's interest in regulating the conditions under which abortions are performed. Moreover, the risk to the woman increases as her pregnancy continues. Thus, the State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

The third reason is the State's interest - some phrase it in terms of duty - in protecting prenatal life. Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception. 45 The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate state interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least potential life is involved, the State may assert interests beyond the protection of the pregnant woman alone. [410 U.S. 113, 151]

Parties challenging state abortion laws have sharply disputed in some courts the contention that a purpose of these laws, when enacted, was to protect prenatal life. 46 Pointing to the absence of legislative history to support the contention, they claim that most state laws were designed solely to protect the woman. Because medical advances have lessened this concern, at least with respect to abortion in early pregnancy, they argue that with respect to such abortions the laws can no longer be justified by any state interest. There is some scholarly support for this view of original purpose. 47 The few state courts called upon to interpret their laws in the late 19th and early 20th centuries did focus on the State's interest in protecting the woman's health rather than in preserving the embryo and fetus. 48 Proponents of this view point out that in many States, including Texas, 49 by statute or judicial interpretation, the pregnant woman herself could not be prosecuted for self-abortion or for cooperating in an abortion performed upon her by another. 50 They claim that adoption of the "quickening" distinction through received common [410 U.S. 113, 152] law and state statutes tacitly recognizes the greater health hazards inherent in late abortion and impliedly repudiates the theory that life begins at conception.

It is with these interests, and the weight to be attached to them, that this case is concerned.

VIII

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The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. In varying contexts, the Court or individual Justices have, indeed, found at least the roots of that right in the First Amendment, Stanley v. Georgia, 394 U.S. 557, 564 (1969); in the Fourth and Fifth Amendments, Terry v. Ohio, 392 U.S. 1, 8 -9 (1968), Katz v. United States, 389 U.S. 347, 350 (1967), Boyd v. United States, 116 U.S. 616 (1886), see Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); in the penumbras of the Bill of Rights, Griswold v. Connecticut, 381 U.S., at 484 -485; in the Ninth Amendment, id., at 486 (Goldberg, J., concurring); or in the concept of liberty guaranteed by the first section of the Fourteenth Amendment, see Meyer v. Nebraska, 262 U.S. 390, 399 (1923). These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," Palko v. Connecticut, 302 U.S. 319, 325 (1937), are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, Loving v. Virginia, 388 U.S. 1, 12 (1967); procreation, Skinner v. Oklahoma, 316 U.S. 535, 541 -542 (1942); contraception, Eisenstadt v. Baird, 405 U.S., at 453 -454; id., at 460, 463-465 [410 U.S. 113, 153] (WHITE, J., concurring in result); family relationships, Prince v. Massachusetts, 321 U.S. 158, 166 (1944); and child rearing and education, Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925), Meyer v. Nebraska, supra.

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.

On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The [410 U.S. 113, 154] Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past. Jacobson v. Massachusetts, 197 U.S. 11 (1905) (vaccination); Buck v. Bell, 274 U.S. 200 (1927) (sterilization).

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We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

We note that those federal and state courts that have recently considered abortion law challenges have reached the same conclusion. A majority, in addition to the District Court in the present case, have held state laws unconstitutional, at least in part, because of vagueness or because of overbreadth and abridgment of rights. Abele v. Markle, 342 F. Supp. 800 (Conn. 1972), appeal docketed, No. 72-56; Abele v. Markle, 351 F. Supp. 224 (Conn. 1972), appeal docketed, No. 72-730; Doe v. Bolton, 319 F. Supp. 1048 (ND Ga. 1970), appeal decided today, post, p. 179; Doe v. Scott, 321 F. Supp. 1385 (ND Ill. 1971), appeal docketed, No. 70-105; Poe v. Menghini, 339 F. Supp. 986 (Kan. 1972); YWCA v. Kugler, 342 F. Supp. 1048 (NJ 1972); Babbitz v. McCann, [410 U.S. 113, 155] 310 F. Supp. 293 (ED Wis. 1970), appeal dismissed, 400 U.S. 1 (1970); People v. Belous, 71 Cal. 2d 954, 458 P.2d 194 (1969), cert. denied, 397 U.S. 915 (1970); State v. Barquet, 262 So.2d 431 (Fla. 1972).

Others have sustained state statutes. Crossen v. Attorney General, 344 F. Supp. 587 (ED Ky. 1972), appeal docketed, No. 72-256; Rosen v. Louisiana State Board of Medical Examiners, 318 F. Supp. 1217 (ED La. 1970), appeal docketed, No. 70-42; Corkey v. Edwards, 322 F. Supp. 1248 (WDNC 1971), appeal docketed, No. 71-92; Steinberg v. Brown, 321 F. Supp. 741 (ND Ohio 1970); Doe v. Rampton (Utah 1971), appeal docketed, No. 71-5666; Cheaney v. State, ___ Ind. ___, 285 N. E. 2d 265 (1972); Spears v. State, 257 So.2d 876 (Miss. 1972); State v. Munson, 86 S. D. 663, 201 N. W. 2d 123 (1972), appeal docketed, No. 72-631.

Although the results are divided, most of these courts have agreed that the right of privacy, however based, is broad enough to cover the abortion decision; that the right, nonetheless, is not absolute and is subject to some limitations; and that at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant. We agree with this approach.

Where certain "fundamental rights" are involved, the Court has held that regulation limiting these rights may be justified only by a "compelling state interest," Kramer v. Union Free School District, 395 U.S. 621, 627 (1969); Shapiro v. Thompson, 394 U.S. 618, 634 (1969), Sherbert v. Verner, 374 U.S. 398, 406 (1963), and that legislative enactments must be narrowly drawn to express only the legitimate state interests at stake. Griswold v. Connecticut, 381 U.S., at 485 ; Aptheker v. Secretary of State, 378 U.S. 500, 508 (1964); Cantwell v. Connecticut, 310 U.S. 296, 307 -308 (1940); see [410 U.S. 113, 156] Eisenstadt v. Baird, 405 U.S., at 460 , 463-464 (WHITE, J., concurring in result).

In the recent abortion cases, cited above, courts have recognized these principles. Those striking down state laws have generally scrutinized the State's interests in protecting health and potential life, and have concluded that neither interest justified broad limitations on the reasons for which a physician and his pregnant patient might decide that she should have an abortion in the early stages of pregnancy. Courts sustaining state laws have held that the State's determinations to protect health or prenatal life are dominant and constitutionally justifiable.

IX

The District Court held that the appellee failed to meet his burden of demonstrating that the Texas statute's infringement upon Roe's rights was necessary to support a compelling state interest, and that, although the appellee presented "several compelling justifications for state presence in the area of abortions," the statutes outstripped these justifications and swept "far beyond any areas of compelling

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state interest." 314 F. Supp., at 1222-1223. Appellant and appellee both contest that holding. Appellant, as has been indicated, claims an absolute right that bars any state imposition of criminal penalties in the area. Appellee argues that the State's determination to recognize and protect prenatal life from and after conception constitutes a compelling state interest. As noted above, we do not agree fully with either formulation.

A. The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, [410 U.S. 113, 157] for the fetus' right to life would then be guaranteed specifically by the Amendment. The appellant conceded as much on reargument. 51 On the other hand, the appellee conceded on reargument 52 that no case could be cited that holds that a fetus is a person within the meaning of the Fourteenth Amendment.

The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution: in the listing of qualifications for Representatives and Senators, Art. I, 2, cl. 2, and 3, cl. 3; in the Apportionment Clause, Art. I, 2, cl. 3; 53 in the Migration and Importation provision, Art. I, 9, cl. 1; in the Emolument Clause, Art. I, 9, cl. 8; in the Electors provisions, Art. II, 1, cl. 2, and the superseded cl. 3; in the provision outlining qualifications for the office of President, Art. II, 1, cl. 5; in the Extradition provisions, Art. IV, 2, cl. 2, and the superseded Fugitive Slave Clause 3; and in the Fifth, Twelfth, and Twenty-second Amendments, as well as in 2 and 3 of the Fourteenth Amendment. But in nearly all these instances, the use of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible pre-natal application. 54 [410 U.S. 113, 158]

All this, together with our observation, supra, that throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. 55 This is in accord with the results reached in those few cases where the issue has been squarely presented. McGarvey v. Magee-Womens Hospital, 340 F. Supp. 751 (WD Pa. 1972); Byrn v. New York City Health & Hospitals Corp., 31 N. Y. 2d 194, 286 N. E. 2d 887 (1972), appeal docketed, No. 72-434; Abele v. Markle, 351 F. Supp. 224 (Conn. 1972), appeal docketed, No. 72-730. Cf. Cheaney v. State, ___ Ind., at ___, 285 N. E. 2d, at 270; Montana v. Rogers, 278 F.2d 68, 72 (CA7 1960), aff'd sub nom. Montana v. Kennedy, 366 U.S. 308 (1961); Keeler v. Superior Court, 2 Cal. 3d 619, 470 P.2d 617 (1970); State v. Dickinson, 28 [410 U.S. 113, 159] Ohio St. 2d 65, 275 N. E. 2d 599 (1971). Indeed, our decision in United States v. Vuitch, 402 U.S. 62 (1971), inferentially is to the same effect, for we there would not have indulged in statutory interpretation favorable to abortion in specified circumstances if the necessary consequence was the termination of life entitled to Fourteenth Amendment protection.

This conclusion, however, does not of itself fully answer the contentions raised by Texas, and we pass on to other considerations.

B. The pregnant woman cannot be isolated in her privacy. She carries an embryo and, later, a fetus, if one accepts the medical definitions of the developing young in the human uterus. See Dorland's Illustrated Medical Dictionary 478-479, 547 (24th ed. 1965). The situation therefore is inherently different from marital intimacy, or bedroom possession of obscene material, or marriage, or procreation, or education, with which Eisenstadt and Griswold, Stanley, Loving, Skinner, and Pierce

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and Meyer were respectively concerned. As we have intimated above, it is reasonable and appropriate for a State to decide that at some point in time another interest, that of health of the mother or that of potential human life, becomes significantly involved. The woman's privacy is no longer sole and any right of privacy she possesses must be measured accordingly.

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer. [410 U.S. 113, 160]

It should be sufficient to note briefly the wide divergence of thinking on this most sensitive and difficult question. There has always been strong support for the view that life does not begin until live birth. This was the belief of the Stoics. 56 It appears to be the predominant, though not the unanimous, attitude of the Jewish faith. 57 It may be taken to represent also the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family. 58 As we have noted, the common law found greater significance in quickening. Physicians and their scientific colleagues have regarded that event with less interest and have tended to focus either upon conception, upon live birth, or upon the interim point at which the fetus becomes "viable," that is, potentially able to live outside the mother's womb, albeit with artificial aid. 59 Viability is usually placed at about seven months (28 weeks) but may occur earlier, even at 24 weeks. 60 The Aristotelian theory of "mediate animation," that held sway throughout the Middle Ages and the Renaissance in Europe, continued to be official Roman Catholic dogma until the 19th century, despite opposition to this "ensoulment" theory from those in the Church who would recognize the existence of life from [410 U.S. 113, 161] the moment of conception. 61 The latter is now, of course, the official belief of the Catholic Church. As one brief amicus discloses, this is a view strongly held by many non-Catholics as well, and by many physicians. Substantial problems for precise definition of this view are posed, however, by new embryological data that purport to indicate that conception is a "process" over time, rather than an event, and by new medical techniques such as menstrual extraction, the "morning-after" pill, implantation of embryos, artificial insemination, and even artificial wombs. 62

In areas other than criminal abortion, the law has been reluctant to endorse any theory that life, as we recognize it, begins before live birth or to accord legal rights to the unborn except in narrowly defined situations and except when the rights are contingent upon live birth. For example, the traditional rule of tort law denied recovery for prenatal injuries even though the child was born alive. 63 That rule has been changed in almost every jurisdiction. In most States, recovery is said to be permitted only if the fetus was viable, or at least quick, when the injuries were sustained, though few [410 U.S. 113, 162] courts have squarely so held. 64 In a recent development, generally opposed by the commentators, some States permit the parents of a stillborn child to maintain an action for wrongful death because of prenatal injuries. 65 Such an action, however, would appear to be one to vindicate the parents' interest and is thus consistent with the view that the fetus, at most, represents only the potentiality of life. Similarly, unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians ad litem. 66 Perfection of the interests involved, again, has generally been contingent upon live birth. In short, the unborn have never been recognized in the law as persons in the whole sense.

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X

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still another important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches [410 U.S. 113, 163] term and, at a point during pregnancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now-established medical fact, referred to above at 149, that until the end of the first trimester mortality in abortion may be less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion [410 U.S. 113, 164] during that period, except when it is necessary to preserve the life or health of the mother.

Measured against these standards, Art. 1196 of the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly. The statute makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure. The statute, therefore, cannot survive the constitutional attack made upon it here.

This conclusion makes it unnecessary for us to consider the additional challenge to the Texas statute asserted on grounds of vagueness. See United States v. Vuitch, 402 U.S., at 67 -72.

XI

To summarize and to repeat:

1. A state criminal abortion statute of the current Texas type, that excepts from criminality only a life-

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saving procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life [410 U.S. 113, 165] may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

2. The State may define the term "physician," as it has been employed in the preceding paragraphs of this Part XI of this opinion, to mean only a physician currently licensed by the State, and may proscribe any abortion by a person who is not a physician as so defined.

In Doe v. Bolton, post, p. 179, procedural requirements contained in one of the modern abortion statutes are considered. That opinion and this one, of course, are to be read together. 67

This holding, we feel, is consistent with the relative weights of the respective interests involved, with the lessons and examples of medical and legal history, with the lenity of the common law, and with the demands of the profound problems of the present day. The decision leaves the State free to place increasing restrictions on abortion as the period of pregnancy lengthens, so long as those restrictions are tailored to the recognized state interests. The decision vindicates the right of the physician to administer medical treatment according to his professional judgment up to the points where important [410 U.S. 113, 166] state interests provide compelling justifications for intervention. Up to those points, the abortion decision in all its aspects is inherently, and primarily, a medical decision, and basic responsibility for it must rest with the physician. If an individual practitioner abuses the privilege of exercising proper medical judgment, the usual remedies, judicial and intra-professional, are available.

XII

Our conclusion that Art. 1196 is unconstitutional means, of course, that the Texas abortion statutes, as a unit, must fall. The exception of Art. 1196 cannot be struck down separately, for then the State would be left with a statute proscribing all abortion procedures no matter how medically urgent the case.

Although the District Court granted appellant Roe declaratory relief, it stopped short of issuing an injunction against enforcement of the Texas statutes. The Court has recognized that different considerations enter into a federal court's decision as to declaratory relief, on the one hand, and injunctive relief, on the other. Zwickler v. Koota, 389 U.S. 241, 252 -255 (1967); Dombrowski v. Pfister, 380 U.S. 479 (1965). We are not dealing with a statute that, on its face, appears to abridge free expression, an area of particular concern under Dombrowski and refined in Younger v. Harris, 401 U.S., at 50 .

We find it unnecessary to decide whether the District Court erred in withholding injunctive relief, for we assume the Texas prosecutorial authorities will give full credence to this decision that the present

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criminal abortion statutes of that State are unconstitutional.

The judgment of the District Court as to intervenor Hallford is reversed, and Dr. Hallford's complaint in intervention is dismissed. In all other respects, the judgment [410 U.S. 113, 167] of the District Court is affirmed. Costs are allowed to the appellee.

It is so ordered.

[For concurring opinion of MR. CHIEF JUSTICE BURGER, see post, p. 207.]

[For concurring opinion of MR. JUSTICE DOUGLAS, see post, p. 209.]

[For dissenting opinion of MR. JUSTICE WHITE, see post, p. 221.]

Footnotes

[Footnote 1] "Article 1191. Abortion

"If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By `abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused.

"Art. 1192. Furnishing the means

"Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

"Art. 1193. Attempt at abortion

"If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided [410 U.S. 113, 118] it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

"Art. 1194. Murder in producing abortion

"If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder."

"Art. 1196. By medical advice

"Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother."

The foregoing Articles, together with Art. 1195, compose Chapter 9 of Title 15 of the Penal Code. Article 1195, not attacked here, reads:

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"Art. 1195. Destroying unborn child

"Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years."

[Footnote 2] Ariz. Rev. Stat. Ann. 13-211 (1956); Conn. Pub. Act No. 1 (May 1972 special session) (in 4 Conn. Leg. Serv. 677 (1972)), and Conn. Gen. Stat. Rev. 53-29, 53-30 (1968) (or unborn child); Idaho Code 18-601 (1948); Ill. Rev. Stat., c. 38, 23-1 (1971); Ind. Code 35-1-58-1 (1971); Iowa Code 701.1 (1971); Ky. Rev. Stat. 436.020 (1962); La. Rev. Stat. 37:1285 (6) (1964) (loss of medical license) (but see 14:87 (Supp. 1972) containing no exception for the life of the mother under the criminal statute); Me. Rev. Stat. Ann., Tit. 17, 51 (1964); Mass. Gen. Laws Ann., c. 272, 19 (1970) (using the term "unlawfully," construed to exclude an abortion to save the mother's life, Kudish v. Bd. of Registration, 356 Mass. 98, 248 N. E. 2d 264 (1969)); Mich. Comp. Laws 750.14 (1948); Minn. Stat. 617.18 (1971); Mo. Rev. Stat. 559.100 (1969); Mont. Rev. Codes Ann. 94-401 (1969); Neb. Rev. Stat. 28-405 (1964); Nev. Rev. Stat. 200.220 (1967); N. H. Rev. Stat. Ann. 585:13 (1955); N. J. Stat. Ann. 2A:87-1 (1969) ("without lawful justification"); N. D. Cent. Code 12-25-01, 12-25-02 (1960); Ohio Rev. Code Ann. 2901.16 (1953); Okla. Stat. Ann., Tit. 21, 861 (1972-1973 Supp.); Pa. Stat. Ann., Tit. 18, [410 U.S. 113, 119] 4718, 4719 (1963) ("unlawful"); R. I. Gen. Laws Ann. 11-3-1 (1969); S. D. Comp. Laws Ann. 22-17-1 (1967); Tenn. Code Ann. 39-301, 39-302 (1956); Utah Code Ann. 76-2-1, 76-2-2 (1953); Vt. Stat. Ann., Tit. 13, 101 (1958); W. Va. Code Ann. 61-2-8 (1966); Wis. Stat. 940.04 (1969); Wyo. Stat. Ann. 6-77, 6-78 (1957).

[Footnote 3] Long ago, a suggestion was made that the Texas statutes were unconstitutionally vague because of definitional deficiencies. The Texas Court of Criminal Appeals disposed of that suggestion peremptorily, saying only,

"It is also insisted in the motion in arrest of judgment that the statute is unconstitutional and void in that it does not sufficiently define or describe the offense of abortion. We do not concur in respect to this question." Jackson v. State, 55 Tex. Cr. R. 79, 89, 115 S. W. 262, 268 (1908).

The same court recently has held again that the State's abortion statutes are not unconstitutionally vague or overbroad. Thompson v. State (Ct. Crim. App. Tex. 1971), appeal docketed, No. 71-1200. The court held that "the State of Texas has a compelling interest to protect fetal life"; that Art. 1191 "is designed to protect fetal life"; that the Texas homicide statutes, particularly Art. 1205 of the Penal Code, are intended to protect a person "in existence by actual birth" and thereby implicitly recognize other human life that is not "in existence by actual birth"; that the definition of human life is for the legislature and not the courts; that Art. 1196 "is more definite than the District of Columbia statute upheld in [United States v.] Vuitch" (402 U.S. 62); and that the Texas statute "is [410 U.S. 113, 120] not vague and indefinite or overbroad." A physician's abortion conviction was affirmed.

In Thompson, n. 2, the court observed that any issue as to the burden of proof under the exemption of Art. 1196 "is not before us." But see Veevers v. State, 172 Tex. Cr. R. 162, 168-169, 354 S. W. 2d 161, 166-167 (1962). Cf. United States v. Vuitch, 402 U.S. 62, 69 -71 (1971).

[Footnote 4] The name is a pseudonym.

[Footnote 5] These names are pseudonyms.

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[Footnote 6] The appellee twice states in his brief that the hearing before the District Court was held on July 22, 1970. Brief for Appellee 13. The docket entries, App. 2, and the transcript, App. 76, reveal this to be an error. The July date appears to be the time of the reporter's transcription. See App. 77.

[Footnote 7] We need not consider what different result, if any, would follow if Dr. Hallford's intervention were on behalf of a class. His complaint in intervention does not purport to assert a class suit and makes no reference to any class apart from an allegation that he "and others similarly situated" must necessarily guess at the meaning of Art. 1196. His application for leave to intervene goes somewhat further, for it asserts that plaintiff Roe does not adequately protect the interest of the doctor "and the class of people who are physicians . . . [and] the class of people who are . . . patients . . . ." The leave application, however, is not the complaint. Despite the District Court's statement to the contrary, 314 F. Supp., at 1225, we fail to perceive the essentials of a class suit in the Hallford complaint.

[Footnote 8] A. Castiglioni, A History of Medicine 84 (2d ed. 1947), E. Krumbhaar, translator and editor (hereinafter Castiglioni).

[Footnote 9] J. Ricci, The Genealogy of Gynaecology 52, 84, 113, 149 (2d ed. 1950) (hereinafter Ricci); L. Lader, Abortion 75-77 (1966) (hereinafter Lader); K. Niswander, Medical Abortion Practices in the United States, in Abortion and the Law 37, 38-40 (D. Smith ed. 1967); G. Williams, The Sanctity of Life and the Criminal Law 148 (1957) (hereinafter Williams); J. Noonan, An Almost Absolute Value in History, in The Morality of Abortion 1, 3-7 (J. Noonan ed. 1970) (hereinafter Noonan); Quay, Justifiable Abortion - Medical and Legal Foundations (pt. 2), 49 Geo. L. J. 395, 406-422 (1961) (hereinafter Quay).

[Footnote 10] L. Edelstein, The Hippocratic Oath 10 (1943) (hereinafter Edelstein). But see Castiglioni 227.

[Footnote 11] Edelstein 12; Ricci 113-114, 118-119; Noonan 5.

[Footnote 12] Edelstein 13-14.

[Footnote 13] Castiglioni 148.

[Footnote 14] Id., at 154.

[Footnote 15] Edelstein 3.

[Footnote 16] Id., at 12, 15-18.

[Footnote 17] Id., at 18; Lader 76.

[Footnote 18] Edelstein 63.

[Footnote 19] Id., at 64.

[Footnote 20] Dorland's Illustrated Medical Dictionary 1261 (24th ed. 1965).

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[Footnote 21] E. Coke, Institutes III *50; 1 W. Hawkins, Pleas of the Crown, c. 31, 16 (4th ed. 1762); 1 W. Blackstone, Commentaries *129-130; M. Hale, Pleas of the Crown 433 (1st Amer. ed. 1847). For discussions of the role of the quickening concept in English common law, see Lader 78; Noonan 223-226; Means, The Law of New [410 U.S. 113, 133] York Concerning Abortion and the Status of the Foetus, 1664-1968: A Case of Cessation of Constitutionality (pt. 1), 14 N. Y. L. F. 411, 418-428 (1968) (hereinafter Means I); Stern, Abortion: Reform and the Law, 59 J. Crim. L. C. & P. S. 84 (1968) (hereinafter Stern); Quay 430-432; Williams 152.

[Footnote 22] Early philosophers believed that the embryo or fetus did not become formed and begin to live until at least 40 days after conception for a male, and 80 to 90 days for a female. See, for example, Aristotle, Hist. Anim. 7.3.583b; Gen. Anim. 2.3.736, 2.5.741; Hippocrates, Lib. de Nat. Puer., No. 10. Aristotle's thinking derived from his three-stage theory of life: vegetable, animal, rational. The vegetable stage was reached at conception, the animal at "animation," and the rational soon after live birth. This theory, together with the 40/80 day view, came to be accepted by early Christian thinkers.

The theological debate was reflected in the writings of St. Augustine, who made a distinction between embryo inanimatus, not yet endowed with a soul, and embryo animatus. He may have drawn upon Exodus 21:22. At one point, however, he expressed the view that human powers cannot determine the point during fetal development at which the critical change occurs. See Augustine, De Origine Animae 4.4 (Pub. Law 44.527). See also W. Reany, The Creation of the Human Soul, c. 2 and 83-86 (1932); Huser, The Crime of Abortion in Canon Law 15 (Catholic Univ. of America, Canon Law Studies No. 162, Washington, D.C., 1942).

Galen, in three treatises related to embryology, accepted the thinking of Aristotle and his followers. Quay 426-427. Later, Augustine on abortion was incorporated by Gratian into the Decretum, published about 1140. Decretum Magistri Gratiani 2.32.2.7 to 2.32.2.10, [410 U.S. 113, 134] in 1 Corpus Juris Canonici 1122, 1123 (A. Friedburg, 2d ed. 1879). This Decretal and the Decretals that followed were recognized as the definitive body of canon law until the new Code of 1917.

For discussions of the canon-law treatment, see Means I, pp. 411-412; Noonan 20-26; Quay 426-430; see also J. Noonan, Contraception: A History of Its Treatment by the Catholic Theologians and Canonists 18-29 (1965).

[Footnote 23] Bracton took the position that abortion by blow or poison was homicide "if the foetus be already formed and animated, and particularly if it be animated." 2 H. Bracton, De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879), or, as a later translation puts it, "if the foetus is already formed or quickened, especially if it is quickened," 2 H. Bracton, On the Laws and Customs of England 341 (S. Thorne ed. 1968). See Quay 431; see also 2 Fleta 60-61 (Book 1, c. 23) (Selden Society ed. 1955).

[Footnote 24] E. Coke, Institutes III *50.

[Footnote 25] 1 W. Blackstone, Commentaries *129-130.

[Footnote 26] Means, The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About to Arise from the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty?, 17 N. Y. L. F. 335 (1971) (hereinafter Means II). The author examines the

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two principal precedents cited marginally by Coke, both contrary to his dictum, and traces the treatment of these and other cases by earlier commentators. He concludes that Coke, who himself participated as an advocate in an abortion case in 1601, may have intentionally misstated the law. The author even suggests a reason: Coke's strong feelings against abortion, coupled with his determination to assert common-law (secular) jurisdiction to assess penalties for an offense that traditionally had been an exclusively ecclesiastical or canon-law crime. See also Lader 78-79, who notes that some scholars doubt that the common law ever was applied to abortion; that the English ecclesiastical courts seem to have lost interest in the problem after 1527; and that the preamble to the English legislation of 1803, 43 Geo. 3, c. 58, 1, referred to in the text, infra, at 136, states that "no adequate means have been hitherto provided for the prevention and punishment of such offenses."

[Footnote 27] Commonwealth v. Bangs, 9 Mass. 387, 388 (1812); Commonwealth v. Parker, 50 Mass. (9 Metc.) 263, 265-266 (1845); State v. Cooper, 22 N. J. L. 52, 58 (1849); Abrams v. Foshee, 3 Iowa 274, 278-280 (1856); Smith v. Gaffard, 31 Ala. 45, 51 (1857); Mitchell v. Commonwealth, 78 Ky. 204, 210 (1879); Eggart v. State, 40 Fla. [410 U.S. 113, 136] 527, 532, 25 So. 144, 145 (1898); State v. Alcorn, 7 Idaho 599, 606, 64 P. 1014, 1016 (1901); Edwards v. State, 79 Neb. 251, 252, 112 N. W. 611, 612 (1907); Gray v. State, 77 Tex. Cr. R. 221, 224, 178 S. W. 337, 338 (1915); Miller v. Bennett, 190 Va. 162, 169, 56 S. E. 2d 217, 221 (1949). Contra, Mills v. Commonwealth, 13 Pa. 631, 633 (1850); State v. Slagle, 83 N.C. 630, 632 (1880).

[Footnote 28] See Smith v. State, 33 Me. 48, 55 (1851); Evans v. People, 49 N. Y. 86, 88 (1872); Lamb v. State, 67 Md. 524, 533, 10 A. 208 (1887).

[Footnote 29] Conn. Stat., Tit. 20, 14 (1821).

[Footnote 30] Conn. Pub. Acts, c. 71, 1 (1860).

[Footnote 31] N. Y. Rev. Stat., pt. 4, c. 1, Tit. 2, Art. 1, 9, p. 661, and Tit. 6, 21, p. 694 (1829).

[Footnote 32] Act of Jan. 20, 1840, 1, set forth in 2 H. Gammel, Laws of Texas 177-178 (1898); see Grigsby v. Reib, 105 Tex. 597, 600, 153 S. W. 1124, 1125 (1913).

[Footnote 33] The early statutes are discussed in Quay 435-438. See also Lader 85-88; Stern 85-86; and Means II 375-376.

[Footnote 34] Criminal abortion statutes in effect in the States as of 1961, together with historical statutory development and important judicial interpretations of the state statutes, are cited and quoted in Quay 447-520. See Comment, A Survey of the Present Statutory and Case Law on Abortion: The Contradictions and the Problems, 1972 U. Ill. L. F. 177, 179, classifying the abortion statutes and listing 25 States as permitting abortion only if necessary to save or preserve the mother's life.

[Footnote 35] Ala. Code, Tit. 14, 9 (1958); D.C. Code Ann. 22-201 (1967).

[Footnote 36] Mass. Gen. Laws Ann., c. 272, 19 (1970); N. J. Stat. Ann. 2A:87-1 (1969); Pa. Stat. Ann., Tit. 18, 4718, 4719 (1963).

[Footnote 37] Fourteen States have adopted some form of the ALI statute. See Ark. Stat. Ann. 41-303 to 41-310 (Supp. 1971); Calif. Health & Safety Code 25950-25955.5 (Supp. 1972); Colo. Rev. Stat. Ann. 40-2-50 to 40-2-53 (Cum. Supp. 1967); Del. Code Ann., Tit. 24, 1790-1793 (Supp. 1972);

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Florida Law of Apr. 13, 1972, c. 72-196, 1972 Fla. Sess. Law Serv., pp. 380-382; Ga. Code 26-1201 to 26-1203 (1972); Kan. Stat. Ann. 21-3407 (Supp. 1971); Md. Ann. Code, Art. 43, 137-139 (1971); Miss. Code Ann. 2223 (Supp. 1972); N. M. Stat. Ann. 40A-5-1 to 40A-5-3 (1972); N.C. Gen. Stat. 14-45.1 (Supp. 1971); Ore. Rev. Stat. 435.405 to 435.495 (1971); S. C. Code Ann. 16-82 to 16-89 (1962 and Supp. 1971); Va. Code Ann. 18.1-62 to 18.1-62.3 (Supp. 1972). Mr. Justice Clark described some of these States as having "led the way." Religion, Morality, and Abortion: A Constitutional Appraisal, 2 Loyola U. (L. A.) L. Rev. 1, 11 (1969).

By the end of 1970, four other States had repealed criminal penalties for abortions performed in early pregnancy by a licensed physician, subject to stated procedural and health requirements. Alaska Stat. 11.15.060 (1970); Haw. Rev. Stat. 453-16 (Supp. 1971); N. Y. Penal Code 125.05, subd. 3 (Supp. 1972-1973); Wash. Rev. Code 9.02.060 to 9.02.080 (Supp. 1972). The precise status of criminal abortion laws in some States is made unclear by recent decisions in state and federal courts striking down existing state laws, in whole or in part.

[Footnote 38] "Whereas, Abortion, like any other medical procedure, should not be performed when contrary to the best interests of the patient [410 U.S. 113, 144] since good medical practice requires due consideration for the patient's welfare and not mere acquiescence to the patient's demand; and

> "Whereas, The standards of sound clinical judgment, which, together with informed patient consent should be determinative according to the merits of each individual case; therefore be it
>
> "RESOLVED, That abortion is a medical procedure and should be performed only by a duly licensed physician and surgeon in an accredited hospital acting only after consultation with two other physicians chosen because of their professional competency and in conformance with standards of good medical practice and the Medical Practice Act of his State; and be it further
>
> "RESOLVED, That no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgment. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally-held moral principles. In these circumstances good medical practice requires only that the physician or other professional personnel withdraw from the case so long as the withdrawal is consistent with good medical practice." Proceedings of the AMA House of Delegates 220 (June 1970).

[Footnote 39] "The Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion that is performed in accordance with good medical practice and under circumstances that do not violate the laws of the community in which he practices.

> "In the matter of abortions, as of any other medical procedure, the Judicial Council becomes involved whenever there is alleged violation of the Principles of Medical Ethics as established by the House of Delegates."

[Footnote 40] "UNIFORM ABORTION ACT

> "SECTION 1. [Abortion Defined; When Authorized.]
>
> "(a) `Abortion' means the termination of human pregnancy with an intention other than to produce a live birth or to remove a dead fetus.

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"(b) An abortion may be performed in this state only if it is performed:

"(1) by a physician licensed to practice medicine [or osteopathy] in this state or by a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this state, [and the abortion is performed [in the physician's office or in a medical clinic, or] in a hospital approved by the [Department of Health] or operated by the United States, this state, or any department, agency, or political subdivision of either;] or by a female upon herself upon the advice of the physician; and

"(2) within 20. weeks after the commencement of the pregnancy [or after 20. weeks only if the physician has reasonable cause to believe (i) there is a substantial risk that continuance of the pregnancy would endanger the life of the mother or would gravely impair the physical or mental health of the mother, (ii) that the child would be born with grave physical or mental defect, or (iii) that [410 U.S. 113, 147] the pregnancy resulted from rape or incest, or illicit intercourse with a girl under the age of 16 years].

"SECTION 2. [Penalty.] Any person who performs or procures an abortion other than authorized by this Act is guilty of a [felony] and, upon conviction thereof, may be sentenced to pay a fine not exceeding [$1,000] or to imprisonment [in the state penitentiary] not exceeding [5 years], or both.

"SECTION 3. [Uniformity of Interpretation.] This Act shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

"SECTION 4. [Short Title.] This Act may be cited as the Uniform Abortion Act.

"SECTION 5. [Severability.] If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

"SECTION 6. [Repeal.] The following acts and parts of acts are repealed: "(1) "(2) "(3)

"SECTION 7. [Time of Taking Effect.] This Act shall take effect _____."

[Footnote 41] "This Act is based largely upon the New York abortion act following a review of the more recent laws on abortion in several states and upon recognition of a more liberal trend in laws on this subject. Recognition was given also to the several decisions in state and federal courts which show a further trend toward liberalization of abortion laws, especially during the first trimester of pregnancy.

"Recognizing that a number of problems appeared in New York, a shorter time period for `unlimited' abortions was advisable. The [410 U.S. 113, 148] time period was bracketed to permit the various states to insert a figure more in keeping with the different conditions that might exist among the states. Likewise, the language limiting the place or places in which abortions may be performed was also bracketed to account for different conditions among the states. In addition, limitations on abortions after the initial `unlimited' period were placed in brackets so that individual states may adopt all or any of these reasons, or place further restrictions upon

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abortions after the initial period.

"This Act does not contain any provision relating to medical review committees or prohibitions against sanctions imposed upon medical personnel refusing to participate in abortions because of religious or other similar reasons, or the like. Such provisions, while related, do not directly pertain to when, where, or by whom abortions may be performed; however, the Act is not drafted to exclude such a provision by a state wishing to enact the same."

[Footnote 42] See, for example, YWCA v. Kugler, 342 F. Supp. 1048, 1074 (N. J. 1972); Abele v. Markle, 342 F. Supp. 800, 805-806 (Conn. 1972) (Newman, J., concurring in result), appeal docketed, No. 72-56; Walsingham v. State, 250 So.2d 857, 863 (Ervin, J., concurring) (Fla. 1971); State v. Gedicke, 43 N. J. L. 86, 90 (1881); Means II 381-382.

[Footnote 43] See C. Haagensen & W. Lloyd, A Hundred Years of Medicine 19 (1943).

[Footnote 44] Potts, Postconceptive Control of Fertility, 8 Int'l J. of G. & O. 957, 967 (1970) (England and Wales); Abortion Mortality, 20 Morbidity and Mortality 208, 209 (June 12, 1971) (U.S. Dept. of HEW, Public Health Service) (New York City); Tietze, United States: Therapeutic Abortions, 1963-1968, 59 Studies in Family Planning 5, 7 (1970); Tietze, Mortality with Contraception and Induced Abortion, 45 Studies in Family Planning 6 (1969) (Japan, Czechoslovakia, Hungary); Tietze & Lehfeldt, Legal Abortion in Eastern Europe, 175 J. A. M. A. 1149, 1152 (April 1961). Other sources are discussed in Lader 17-23.

[Footnote 45] See Brief of Amicus National Right to Life Committee; R. Drinan, The Inviolability of the Right to be Born, in Abortion and the Law 107 (D. Smith ed. 1967); Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U. C. L. A. L. Rev. 233 (1969); Noonan 1.

[Footnote 46] See, e. g., Abele v. Markle, 342 F. Supp. 800 (Conn. 1972), appeal docketed, No. 72-56.

[Footnote 47] See discussions in Means I and Means II.

[Footnote 48] See, e. g., State v. Murphy, 27 N. J. L. 112, 114 (1858).

[Footnote 49] Watson v. State, 9 Tex. App. 237, 244-245 (1880); Moore v. State, 37 Tex. Cr. R. 552, 561, 40 S. W. 287, 290 (1897); Shaw v. State, 73 Tex. Cr. R. 337, 339, 165 S. W. 930, 931 (1914); Fondren v. State, 74 Tex. Cr. R. 552, 557, 169 S. W. 411, 414 (1914); Gray v. State, 77 Tex. Cr. R. 221, 229, 178 S. W. 337, 341 (1915). There is no immunity in Texas for the father who is not married to the mother. Hammett v. State, 84 Tex. Cr. R. 635, 209 S. W. 661 (1919); Thompson v. State (Ct. Crim. App. Tex. 1971), appeal docketed, No. 71-1200.

[Footnote 50] See Smith v. State, 33 Me., at 55; In re Vince, 2 N. J. 443, 450, 67 A. 2d 141, 144 (1949). A short discussion of the modern law on this issue is contained in the Comment to the ALI's Model Penal Code 207.11, at 158 and nn. 35-37 (Tent. Draft No. 9, 1959).

[Footnote 51] Tr. of Oral Rearg. 20-21.

[Footnote 52] Tr. of Oral Rearg. 24.

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[Footnote 53] We are not aware that in the taking of any census under this clause, a fetus has ever been counted.

[Footnote 54] When Texas urges that a fetus is entitled to Fourteenth Amendment protection as a person, it faces a dilemma. Neither in Texas nor in any other State are all abortions prohibited. Despite broad proscription, an exception always exists. The exception contained [410 U.S. 113, 158] in Art. 1196, for an abortion procured or attempted by medical advice for the purpose of saving the life of the mother, is typical. But if the fetus is a person who is not to be deprived of life without due process of law, and if the mother's condition is the sole determinant, does not the Texas exception appear to be out of line with the Amendment's command?

There are other inconsistencies between Fourteenth Amendment status and the typical abortion statute. It has already been pointed out, n. 49, supra, that in Texas the woman is not a principal or an accomplice with respect to an abortion upon her. If the fetus is a person, why is the woman not a principal or an accomplice? Further, the penalty for criminal abortion specified by Art. 1195 is significantly less than the maximum penalty for murder prescribed by Art. 1257 of the Texas Penal Code. If the fetus is a person, may the penalties be different?

[Footnote 55] Cf. the Wisconsin abortion statute, defining "unborn child" to mean "a human being from the time of conception until it is born alive," Wis. Stat. 940.04 (6) (1969), and the new Connecticut Statute, Pub. Act No. 1 (May 1972 special session), declaring it to be the public policy of the State and the legislative intent "to protect and preserve human life from the moment of conception."

[Footnote 56] Edelstein 16.

[Footnote 57] Lader 97-99; D. Feldman, Birth Control in Jewish Law 251-294 (1968). For a stricter view, see I. Jakobovits, Jewish Views on Abortion, in Abortion and the Law 124 (D. Smith ed. 1967).

[Footnote 58] Amicus Brief for the American Ethical Union et al. For the position of the National Council of Churches and of other denominations, see Lader 99-101.

[Footnote 59] L. Hellman & J. Pritchard, Williams Obstetrics 493 (14th ed. 1971); Dorland's Illustrated Medical Dictionary 1689 (24th ed. 1965).

[Footnote 60] Hellman & Pritchard, supra, n. 59, at 493.

[Footnote 61] For discussions of the development of the Roman Catholic position, see D. Callahan, Abortion: Law, Choice, and Morality 409-447 (1970); Noonan 1.

[Footnote 62] See Brodie, The New Biology and the Prenatal Child, 9 J. Family L. 391, 397 (1970); Gorney, The New Biology and the Future of Man, 15 U. C. L. A. L. Rev. 273 (1968); Note, Criminal Law - Abortion - The "Morning-After Pill" and Other Pre-Implantation Birth-Control Methods and the Law, 46 Ore. L. Rev. 211 (1967); G. Taylor, The Biological Time Bomb 32 (1968); A. Rosenfeld, The Second Genesis 138-139 (1969); Smith, Through a Test Tube Darkly: Artificial Insemination and the Law, 67 Mich. L. Rev. 127 (1968): Note, Artificial Insemination and the Law, 1968 U. Ill. L. F. 203.

[Footnote 63] W. Prosser, The Law of Torts 335-338 (4th ed. 1971); 2 F. Harper & F. James, The

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Law of Torts 1028-1031 (1956); Note, 63 Harv. L. Rev. 173 (1949).

[Footnote 64] See cases cited in Prosser, supra, n. 63, at 336-338; Annotation, Action for Death of Unborn Child, 15 A. L. R. 3d 992 (1967).

[Footnote 65] Prosser, supra, n. 63, at 338; Note, The Law and the Unborn Child: The Legal and Logical Inconsistencies, 46 Notre Dame Law. 349, 354-360 (1971).

[Footnote 66] Louisell, Abortion, The Practice of Medicine and the Due Process of Law, 16 U. C. L. A. L. Rev. 233, 235-238 (1969); Note, 56 Iowa L. Rev. 994, 999-1000 (1971); Note, The Law and the Unborn Child, 46 Notre Dame Law. 349, 351-354 (1971).

[Footnote 67] Neither in this opinion nor in Doe v. Bolton, post, p. 179, do we discuss the father's rights, if any exist in the constitutional context, in the abortion decision. No paternal right has been asserted in either of the cases, and the Texas and the Georgia statutes on their face take no cognizance of the father. We are aware that some statutes recognize the father under certain circumstances. North Carolina, for example, N.C. Gen. Stat. 14-45.1 (Supp. 1971), requires written permission for the abortion from the husband when the woman is a married minor, that is, when she is less than 18 years of age, 41 N.C. A. G. 489 (1971); if the woman is an unmarried minor, written permission from the parents is required. We need not now decide whether provisions of this kind are constitutional.

MR. JUSTICE STEWART, concurring.

In 1963, this Court, in Ferguson v. Skrupa, 372 U.S. 726 , purported to sound the death knell for the doctrine of substantive due process, a doctrine under which many state laws had in the past been held to violate the Fourteenth Amendment. As Mr. Justice Black's opinion for the Court in Skrupa put it: "We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws." Id., at 730. 1

Barely two years later, in Griswold v. Connecticut, 381 U.S. 479 , the Court held a Connecticut birth control law unconstitutional. In view of what had been so recently said in Skrupa, the Court's opinion in Griswold understandably did its best to avoid reliance on the Due Process Clause of the Fourteenth Amendment as the ground for decision. Yet, the Connecticut law did not violate any provision of the Bill of Rights, nor any other specific provision of the Constitution. 2 So it was clear [410 U.S. 113, 168] to me then, and it is equally clear to me now, that the Griswold decision can be rationally understood only as a holding that the Connecticut statute substantively invaded the "liberty" that is protected by the Due Process Clause of the Fourteenth Amendment. 3 As so understood, Griswold stands as one in a long line of pre-Skrupa cases decided under the doctrine of substantive due process, and I now accept it as such.

> "In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." Board of Regents v. Roth, 408 U.S. 564, 572 . The Constitution nowhere mentions a specific right of personal choice in matters of marriage and family life, but the "liberty" protected by the Due Process Clause of the Fourteenth Amendment covers more than those freedoms explicitly named in the Bill of Rights. See Schware v. Board of Bar Examiners, 353 U.S. 232, 238 -239; Pierce v. Society of Sisters, 268 U.S. 510, 534 -535; Meyer v. Nebraska, 262 U.S. 390, 399 -400. Cf. Shapiro v. Thompson, 394 U.S. 618, 629 -630; United States v. Guest, 383 U.S. 745, 757 -758; Carrington v. Rash, 380 U.S. 89, 96 ; Aptheker v.

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Secretary of State, 378 U.S. 500, 505 ; Kent v. Dulles, 357 U.S. 116, 127 ; Bolling v. Sharpe, 347 U.S. 497, 499 -500; Truax v. Raich, 239 U.S. 33, 41 . [410 U.S. 113, 169]

As Mr. Justice Harlan once wrote: "[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This `liberty' is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment." Poe v. Ullman, 367 U.S. 497, 543 (opinion dissenting from dismissal of appeal) (citations omitted). In the words of Mr. Justice Frankfurter, "Great concepts like . . . `liberty' . . . were purposely left to gather meaning from experience. For they relate to the whole domain of social and economic fact, and the statesmen who founded this Nation knew too well that only a stagnant society remains unchanged." National Mutual Ins. Co. v. Tidewater Transfer Co., 337 U.S. 582, 646 (dissenting opinion).

Several decisions of this Court make clear that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment. Loving v. Virginia, 388 U.S. 1, 12 ; Griswold v. Connecticut, supra; Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra. See also Prince v. Massachusetts, 321 U.S. 158, 166 ; Skinner v. Oklahoma, 316 U.S. 535, 541 . As recently as last Term, in Eisenstadt v. Baird, 405 U.S. 438, 453 , we recognized "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person [410 U.S. 113, 170] as the decision whether to bear or beget a child." That right necessarily includes the right of a woman to decide whether or not to terminate her pregnancy. "Certainly the interests of a woman in giving of her physical and emotional self during pregnancy and the interests that will be affected throughout her life by the birth and raising of a child are of a far greater degree of significance and personal intimacy than the right to send a child to private school protected in Pierce v. Society of Sisters, 268 U.S. 510 (1925), or the right to teach a foreign language protected in Meyer v. Nebraska, 262 U.S. 390 (1923)." Abele v. Markle, 351 F. Supp. 224, 227 (Conn. 1972).

Clearly, therefore, the Court today is correct in holding that the right asserted by Jane Roe is embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment.

It is evident that the Texas abortion statute infringes that right directly. Indeed, it is difficult to imagine a more complete abridgment of a constitutional freedom than that worked by the inflexible criminal statute now in force in Texas. The question then becomes whether the state interests advanced to justify this abridgment can survive the "particularly careful scrutiny" that the Fourteenth Amendment here requires.

The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. These are legitimate objectives, amply sufficient to permit a State to regulate abortions as it does other surgical procedures, and perhaps sufficient to permit a State to regulate abortions more stringently or even to prohibit them in the late stages of pregnancy. But such legislation is not before us, and I think the Court today has thoroughly demonstrated that these state interests cannot constitutionally support the broad abridgment of personal [410 U.S. 113, 171] liberty worked by the existing Texas law. Accordingly, I join the Court's opinion holding that that law is invalid under the Due Process Clause of the Fourteenth Amendment.

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[Footnote 1] Only Mr. Justice Harlan failed to join the Court's opinion, 372 U.S., at 733 .

[Footnote 2] There is no constitutional right of privacy, as such. "[The Fourth] Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all. Other provisions of [410 U.S. 113, 168] the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's general right to privacy - his right to be let alone by other people - is, like the protection of his property and of his very life, left largely to the law of the individual States." Katz v. United States, 389 U.S. 347, 350 -351 (footnotes omitted).

[Footnote 3] This was also clear to Mr. Justice Black, 381 U.S., at 507 (dissenting opinion); to Mr. Justice Harlan, 381 U.S., at 499 (opinion concurring in the judgment); and to MR. JUSTICE WHITE, 381 U.S., at 502 (opinion concurring in the judgment). See also Mr. Justice Harlan's thorough and thoughtful opinion dissenting from dismissal of the appeal in Poe v. Ullman, 367 U.S. 497, 522 .

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship. While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with those parts of it that invalidate the Texas statute in question, and therefore dissent.

I

The Court's opinion decides that a State may impose virtually no restriction on the performance of abortions during the first trimester of pregnancy. Our previous decisions indicate that a necessary predicate for such an opinion is a plaintiff who was in her first trimester of pregnancy at some time during the pendency of her law-suit. While a party may vindicate his own constitutional rights, he may not seek vindication for the rights of others. Moose Lodge v. Irvis, 407 U.S. 163 (1972); Sierra Club v. Morton, 405 U.S. 727 (1972). The Court's statement of facts in this case makes clear, however, that the record in no way indicates the presence of such a plaintiff. We know only that plaintiff Roe at the time of filing her complaint was a pregnant woman; for aught that appears in this record, she may have been in her last trimester of pregnancy as of the date the complaint was filed.

Nothing in the Court's opinion indicates that Texas might not constitutionally apply its proscription of abortion as written to a woman in that stage of pregnancy. Nonetheless, the Court uses her complaint against the Texas statute as a fulcrum for deciding that States may [410 U.S. 113, 172] impose virtually no restrictions on medical abortions performed during the first trimester of pregnancy. In deciding such a hypothetical lawsuit, the Court departs from the longstanding admonition that it should never "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." Liverpool, New York & Philadelphia S. S. Co. v. Commissioners of Emigration, 113 U.S. 33, 39 (1885). See also Ashwander v. TVA, 297 U.S. 288, 345 (1936) (Brandeis, J., concurring).

II

Even if there were a plaintiff in this case capable of litigating the issue which the Court decides, I would reach a conclusion opposite to that reached by the Court. I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged,

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bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the Court has referred to as embodying a right to privacy. Katz v. United States, 389 U.S. 347 (1967).

If the Court means by the term "privacy" no more than that the claim of a person to be free from unwanted state regulation of consensual transactions may be a form of "liberty" protected by the Fourteenth Amendment, there is no doubt that similar claims have been upheld in our earlier decisions on the basis of that liberty. I agree with the statement of MR. JUSTICE STEWART in his concurring opinion that the "liberty," against deprivation of which without due process the Fourteenth [410 U.S. 113, 173] Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. The test traditionally applied in the area of social and economic legislation is whether or not a law such as that challenged has a rational relation to a valid state objective. Williamson v. Lee Optical Co., 348 U.S. 483, 491 (1955). The Due Process Clause of the Fourteenth Amendment undoubtedly does place a limit, albeit a broad one, on legislative power to enact laws such as this. If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in Williamson, supra. But the Court's sweeping invalidation of any restrictions on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

The Court eschews the history of the Fourteenth Amendment in its reliance on the "compelling state interest" test. See Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 179 (1972) (dissenting opinion). But the Court adds a new wrinkle to this test by transposing it from the legal considerations associated with the Equal Protection Clause of the Fourteenth Amendment to this case arising under the Due Process Clause of the Fourteenth Amendment. Unless I misapprehend the consequences of this transplanting of the "compelling state interest test," the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it. [410 U.S. 113, 174]

While the Court's opinion quotes from the dissent of Mr. Justice Holmes in Lochner v. New York, 198 U.S. 45, 74 (1905), the result it reaches is more closely attuned to the majority opinion of Mr. Justice Peckham in that case. As in Lochner and similar cases applying substantive due process standards to economic and social welfare legislation, the adoption of the compelling state interest standard will inevitably require this Court to examine the legislative policies and pass on the wisdom of these policies in the very process of deciding whether a particular state interest put forward may or may not be "compelling." The decision here to break pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment.

The fact that a majority of the States reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not "so rooted in the traditions and conscience of our people as to be ranked as fundamental," Snyder v. Massachusetts, 291 U.S. 97, 105 (1934). Even today, when society's views on abortion are changing, the very existence of the debate is evidence that the "right" to an abortion is not so universally accepted as the appellant would have us believe.

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To reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment. As early as 1821, the first state law dealing directly with abortion was enacted by the Connecticut Legislature. Conn. Stat., Tit. 22, 14, 16. By the time of the adoption of the Fourteenth [410 U.S. 113, 175] Amendment in 1868, there were at least 36 laws enacted by state or territorial legislatures limiting abortion. 1 While many States have amended or updated [410 U.S. 113, 176] their laws, 21 of the laws on the books in 1868 remain in effect today. 2 Indeed, the Texas statute struck down today was, as the majority notes, first enacted in 1857 [410 U.S. 113, 177] and "has remained substantially unchanged to the present time." Ante, at 119.

There apparently was no question concerning the validity of this provision or of any of the other state statutes when the Fourteenth Amendment was adopted. The only conclusion possible from this history is that the drafters did not intend to have the Fourteenth Amendment withdraw from the States the power to legislate with respect to this matter.

III

Even if one were to agree that the case that the Court decides were here, and that the enunciation of the substantive constitutional law in the Court's opinion were proper, the actual disposition of the case by the Court is still difficult to justify. The Texas statute is struck down in toto, even though the Court apparently concedes that at later periods of pregnancy Texas might impose these selfsame statutory limitations on abortion. My understanding of past practice is that a statute found [410 U.S. 113, 178] to be invalid as applied to a particular plaintiff, but not unconstitutional as a whole, is not simply "struck down" but is, instead, declared unconstitutional as applied to the fact situation before the Court. Yick Wo v. Hopkins, 118 U.S. 356 (1886); Street v. New York, 394 U.S. 576 (1969).

For all of the foregoing reasons, I respectfully dissent.

[Footnote 1] Jurisdictions having enacted abortion laws prior to the adoption of the Fourteenth Amendment in 1868:

1. Alabama - Ala. Acts, c. 6, 2 (1840).

2. Arizona - Howell Code, c. 10, 45 (1865).

3. Arkansas - Ark. Rev. Stat., c. 44, div. III, Art. II, 6 (1838).

4. California - Cal. Sess. Laws, c. 99, 45, p. 233 (1849-1850).

5. Colorado (Terr.) - Colo. Gen. Laws of Terr. of Colo., 1st Sess., 42, pp. 296-297 (1861).

6. Connecticut - Conn. Stat., Tit. 20, 14, 16 (1821). By 1868, this statute had been replaced by another abortion law. Conn. Pub. Acts, c. 71, 1, 2, p. 65 (1860).

7. Florida - Fla. Acts 1st Sess., c. 1637, subc. 3, 10, 11, subc. 8, 9, 10, 11 (1868), as amended, now Fla. Stat. Ann. 782.09, 782.10, 797.01, 797.02, 782.16 (1965).

8. Georgia - Ga. Pen. Code, 4th Div., 20 (1833).

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9. Kingdom of Hawaii - Hawaii Pen. Code, c. 12, 1, 2, 3 (1850).

10. Idaho (Terr.) - Idaho (Terr.) Laws, Crimes and Punishments 33, 34, 42, pp. 441, 443 (1863).

11. Illinois - Ill. Rev. Criminal Code 40, 41, 46, pp. 130, 131 (1827). By 1868, this statute had been replaced by a subsequent enactment. Ill. Pub. Laws 1, 2, 3, p. 89 (1867).

12. Indiana - Ind. Rev. Stat. 1, 3, p. 224 (1838). By 1868 this statute had been superseded by a subsequent enactment. Ind. Laws, c. LXXXI, 2 (1859).

13. Iowa (Terr.) - Iowa (Terr.) Stat., 1st Legis., 1st Sess., 18, p. 145 (1838). By 1868, this statute had been superseded by a subsequent enactment. Iowa (Terr.) Rev. Stat., c. 49, 10, 13 (1843).

14. Kansas (Terr.) - Kan. (Terr.) Stat., c. 48, 9, 10, 39 (1855). By 1868, this statute had been superseded by a subsequent enactment. Kan. (Terr.) Laws, c. 28, 9, 10, 37 (1859).

15. Louisiana - La. Rev. Stat., Crimes and Offenses 24, p. 138 (1856).

16. Maine - Me. Rev. Stat., c. 160, 11, 12, 13, 14 (1840).

17. Maryland - Md. Laws, c. 179, 2, p. 315 (1868).

18. Massachusetts - Mass. Acts & Resolves, c. 27 (1845).

19. Michigan - Mich. Rev. Stat., c. 153, 32, 33, 34, p. 662 (1846). [410 U.S. 113, 176] 20. Minnesota (Terr.) - Minn. (Terr.) Rev. Stat., c. 100, 10, 11, p. 493 (1851).

21. Mississippi - Miss. Code, c. 64, 8, 9, p. 958 (1848).

22. Missouri - Mo. Rev. Stat., Art. II, 9, 10, 36, pp. 168, 172 (1835).

23. Montana (Terr.) - Mont. (Terr.) Laws, Criminal Practice Acts 41, p. 184 (1864).

24. Nevada (Terr.) - Nev. (Terr.) Laws, c. 28, 42, p. 63 (1861).

25. New Hampshire - N. H. Laws, c. 743, 1, p. 708 (1848).

26. New Jersey - N. J. Laws, p. 266 (1849).

27. New York - N. Y. Rev. Stat., pt. 4, c. 1, Tit. 2, 8, 9, pp. 12-13 (1828). By 1868, this statute had been superseded. N. Y. Laws, c. 260, 1-6, pp. 285-286 (1845); N. Y. Laws, c. 22, 1, p. 19 (1846).

28. Ohio - Ohio Gen. Stat. 111 (1), 112 (2), p. 252 (1841).

29. Oregon - Ore. Gen. Laws, Crim. Code, c. 43, 509, p. 528 (1845-1864).

30. Pennsylvania - Pa. Laws No. 374, 87, 88, 89 (1860).

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31. Texas - Tex. Gen. Stat. Dig., c. VII, Arts. 531-536, p. 524 (Oldham & White 1859).

32. Vermont - Vt. Acts No. 33, 1 (1846). By 1868, this statute had been amended. Vt. Acts No. 57, 1, 3 (1867).

33. Virginia - Va. Acts, Tit. II, c. 3, 9, p. 96 (1848).

34. Washington (Terr.) - Wash. (Terr.) Stats., c. II, 37, 38, p. 81 (1854).

35. West Virginia - See Va. Acts., Tit. II, c. 3, 9, p. 96 (1848); W. Va. Const., Art. XI, par. 8 (1863).

36. Wisconsin - Wis. Rev. Stat., c. 133, 10, 11 (1849). By 1868, this statute had been superseded. Wis. Rev. Stat., c. 164, 10, 11; c. 169, 58, 59 (1858).

[Footnote 2] Abortion laws in effect in 1868 and still applicable as of August 1970:

1. Arizona (1865). 2. Connecticut (1860). 3. Florida (1868). 4. Idaho (1863). 5. Indiana (1838). [410 U.S. 113, 177] 6. Iowa (1843). 7. Maine (1840). 8. Massachusetts (1845). 9. Michigan (1846). 10. Minnesota (1851). 11. Missouri (1835). 12. Montana (1864). 13. Nevada (1861). 14. New Hampshire (1848). 15. New Jersey (1849). 16. Ohio (1841). 17. Pennsylvania (1860). 18. Texas (1859). 19. Vermont (1867). 20. West Virginia (1863). 21. Wisconsin (1858). [410 U.S. 113, 179]

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Committee to Defend Reproductive Rights v. Myers , 29 Cal.3d 252

[S.F. No. 24069. Supreme Court of California. March 20, 1981.]

COMMITTEE TO DEFEND REPRODUCTIVE RIGHTS et al., Plaintiffs and Appellants, v. BEVERLEE A. MYERS, as Director, etc., et al., Defendants and Respondents.

[S.F. No. 24053. Supreme Court of California. March 20, 1981.]

COMMITTEE TO DEFEND REPRODUCTIVE RIGHTS et al., Petitioners, v. KENNETH CORY, as State Controller, et al., Respondents.

[S.F. No. 24192. Supreme Court of California. March 20, 1981.]

COMMITTEE TO DEFEND REPRODUCTIVE RIGHTS et al., Petitioners, v. JESSE M. UNRUH, as State Treasurer, et al., Respondents

(Opinion by Tobriner, J., with Mosk and Newman, JJ., concurring. Separate concurring opinion by Bird, C.J. Separate dissenting opinion by Richardson, J., with Clark, J., concurring.)

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OPINION

TOBRINER, J.

Plaintiffs, representing indigent women throughout the state, challenge the constitutionality under the California Constitution of provisions in the 1978, 1979, and 1980 California Budget Acts that limit Medi-Cal funding for abortions. Although the acts differ in minor respects, all afford full funding of medical expenses incurred by indigent women who decide to bear a child, but, except in a few limited circumstances, deny funding to those indigent women who choose to have an **abortion**. Plaintiffs contend that this selective or discriminatory public funding scheme violates a number of distinct constitutional guarantees, in particular the women's rights of privacy, due process, and equal protection of the laws.

At the outset, to dispel certain misconceptions that have appeared in this case, we must clarify the precise, narrow legal issue before this court. First, this case does not turn on the morality or immorality of **abortion**, and most decidedly does not concern the personal views of the individual justices as to the wisdom of the legislation itself or the ethical considerations involved in a woman's individual decision whether or not to bear a child. Indeed, although in this instance the Legislature has adopted restrictions which discriminate against women who choose to have an **abortion**, similar constitutional issues would arise if the Legislature -- as a population control measure, for example -- funded Medi-Cal abortions but refused to provide comparable medical care for poor women who choose childbirth. Thus, the constitutional question before us does not involve a weighing of the value of **abortion** as against childbirth, but instead concerns the protection of either procreative choice from discriminatory governmental treatment.

Second, contrary to the suggestion of the defendants and the dissent, the question presented is not whether the state is generally obligated to subsidize the exercise of constitutional rights for those who cannot otherwise afford to do so; plaintiffs do not contend that the state would be required to fund abortions for poor women if the state had not chosen to fund medical services for poor women who choose to bear a child. Rather, we face the much narrower question of whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons solely because such persons seek to exercise their constitutional **[29 Cal.3d 257]** right of procreative choice in a manner which the state does not favor and does not wish to support.

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In defending the constitutionality of the provisions in question, the Attorney General relies most prominently upon the recent decision of the United States Supreme Court in Harris v. McRae (1980) 448 U.S. 297 [65 L.Ed.2d 784, 100 S.Ct. 2671] (hereafter McRae). In McRae, the Supreme Court, by a closely divided vote (five to four), upheld restrictions on federal Medicaid funding of abortions similar to those in the state acts before us. As the Attorney General acknowledges, however, the McRae case did not present any question under the California Constitution and consequently the justices of the high court neither addressed nor resolved the question of the compatibility of such a statutory scheme with our state constitutional guarantees. It is this question of state constitutional law, not resolved by McRae, which we must decide in the present case.

In addressing this issue, we shall explain initially that the analysis utilized by the majority of the United States Supreme Court in McRae differs substantially from the analysis mandated by the controlling California authorities and thus cannot be followed here. In McRae, the five-justice majority acknowledged that the governmental program provided unequal treatment in the distribution of public benefits solely on the basis of how an individual woman exercised her basic constitutional right of procreative choice. The court concluded, however, that the federal Constitution required no special justification for such discriminatory treatment so long as the program placed no new obstacles in the path of the woman seeking to exercise her constitutional right. (448 U.S. at pp. 315-318 [65 L.Ed.2d at pp. 804-805, 100 S.Ct. at p. 2688].)

By contrast, the governing California cases, discussed at length below, have long held that a discriminatory or restricted government benefit program demands special scrutiny whether or not it erects some new or additional obstacle that impedes the exercise of constitutional rights. In a series of cases reaching back more than three decades, this court has developed and applied a three-part test for evaluating the constitutionality of statutory schemes, like the program at issue here, that condition the receipt of benefits upon a recipient's waiver of a constitutional right or upon his exercise of such right in a manner which the government approves. **[29 Cal.3d 258]**

In order to sustain the constitutionality of such a scheme under the California Constitution, the state must demonstrate (1) "that the imposed conditions relate to the purposes of the legislation which confers the benefit or privilege"; (2) that "the utility of imposing the conditions ... manifestly outweigh [s] any resulting impairment of constitutional rights"; and (3) that there are no "less offensive alternatives" available for achieving the state's objective. (Bagley v. Washington Township Hospital Dist. (1966) 65 Cal.2d 499 , 505-507 [55 Cal.Rptr. 401, 421 P.2d 409].)

As we shall see, when measured against this established standard, the statutory scheme at issue is plainly unconstitutional. First, the Budget Act restrictions are antithetical to the purpose of the Medi-Cal program -- to provide indigents with access to medical services comparable to that enjoyed by more affluent persons. Second, the benefits of the funding restrictions do not manifestly outweigh the impairment of the constitutional rights; the fiscal advantages of the restrictions are illusory, and the asserted state interest in protecting fetal life cannot constitutionally claim priority over the woman's fundamental right of procreative choice. Third, the Medi-Cal program as qualified by the Budget Act restrictions clearly does not aid poor women who choose to bear children in a manner least offensive to the rights of those who choose **abortion**. Accordingly, we conclude that the challenged restrictions cannot stand.

1. Background of the present litigation.

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The California Medi-Cal program funds "physician, hospital or clinic outpatient, [and] surgical center" services, as well as "inpatient hospital services," for "recipients of public assistance [and] medically indigent aged and other persons." (Welf. & Inst. Code, §§ 14000, 14132, subds. (a) & (b).) No one disputes that abortions performed by a physician, whether in a hospital, clinic, or office, are medical services which, in the absence of special funding restrictions, would be funded under the foregoing provisions. Prior to 1978, the Medi-Cal program paid for legal abortions obtained by Medi-Cal recipients.

The California Legislature, however, inserted into the 1978, 1979, and 1980 Budget Acts provisions restricting Medi-Cal funding of abortions. (Stats. 1978, ch. 359, § 2, item 248, pp. 823-825; Stats. 1979, ch. 259, § 2, item 261.5, pp. 644-646; Stats. 1980, ch. 510, § 2, item **[29 Cal.3d 259]** 287.5, pp. 1146-1148.) Although the 1978 enactment differs slightly from the 1979 and 1980 restrictions, all in essence provide funding for abortions only (1) when pregnancy would endanger the mother's life; (2) when pregnancy would cause severe and long-lasting physical health damage to the mother; (3) when pregnancy is the result of illegal intercourse (rape, incest, or unlawful intercourse with a minor); or (4) when **abortion** is necessary to prevent the birth of severely defective infants. fn. 1

Before the 1978 restrictions could take effect, plaintiffs filed this suit against Beverlee A. Myers, Director of the State Department of Health Services, to enjoin her from enforcing the restrictions. The trial court upheld the funding restrictions and refused injunctive relief. Plaintiffs appealed from the judgment, the Court of Appeal affirmed in a two-to-one **[29 Cal.3d 260]** decision, and we granted a hearing to decide the important constitutional issue presented. fn. 2

While the suit attacking the 1978 Budget Act restrictions was pending before us on petition for hearing, that act expired, to be replaced by the essentially identical provisions of the 1979 Budget Act. Plaintiffs thereupon filed an original petition in this court (Committee to Defend Reproductive Rights v. Cory) seeking mandate to bar enforcement of the 1979 act. We granted an alternative writ and stayed enforcement of the restrictions pending resolution of the merits.

The 1979 Budget Act expired June 30, 1980. On July 16 the Legislature enacted the 1980 Budget Act, which imposed restrictions on **abortion** funding identical to those in the 1979 act. Plaintiffs promptly filed an original petition for mandate (Committee to Defend Reproductive Rights v. Unruh) to restrain enforcement of the 1980 act. We issued an alternative writ and stayed enforcement of the funding restrictions pending resolution of the controversy. fn. 3

2. Our court bears an independent obligation to resolve plaintiffs' claims under the California Constitution on the basis of the governing state constitutional principles.

In these actions, plaintiffs contend that the statutes violate a number of provisions of both the California and United States Constitutions. As already noted, in defending the challenged budget restrictions the Attorney General relies most heavily on the United States Supreme Court's recent decision in McRae, in which a five-justice majority concluded that similar funding restrictions in the federal Medicaid program did not violate the provisions of the federal Constitution. McRae, of course, did not resolve or even address the question of the validity of such a statutory scheme under the California Constitution. **[29 Cal.3d 261]**

[1] Under these circumstances, we think it important to reiterate the basic principles of federalism which illuminate our responsibilities in construing our state Constitution. In emphasizing, in People v.

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Brisendine (1975) 13 Cal.3d 528 , 549-550 [119 Cal.Rptr. 315, 531 P.2d 1099], "the incontrovertible conclusion that the California Constitution is, and always has been, a document of independent force," our court explained that "[i]t is a fiction too long accepted that provisions in state constitutions textually identical to the Bill of Rights were intended to mirror their federal counterpart. The lesson of history is otherwise: the Bill of Rights was based upon the corresponding provisions of the first state constitutions, rather than the reverse .... The federal Constitution was designed to guard the states as sovereignties against potential abuses of centralized government; state charters, however, were conceived as the first and at one time the only line of protection of the individual against the excesses of local officials." Accordingly, we affirmed in Brisendine that state courts, in interpreting constitutional guarantees contained in state constitutions, are "independently responsible for safeguarding the rights of their citizens." (Italics added.) (Id. at p. 551.) fn. 4

Contrary to the Attorney General's rhetoric, such independent construction does not represent an unprincipled exercise of power, but a means of fulfilling our solemn and independent constitutional obligation to interpret the safeguards guaranteed by the California Constitution in a manner consistent with the governing principles of California law. As we explained very recently in People v. Chavez (1980) 26 Cal.3d 334 , 352 [161 Cal.Rptr. 762, 605 P.2d 401]: "[J]ust as the United States Supreme Court bears the ultimate judicial responsibility for determining matters of federal law, this court bears the ultimate judicial responsibility for resolving questions of state law, including the proper **[29 Cal.3d 262]** interpretation of provisions of the state Constitution. [Citations.] In fulfilling this difficult and grave responsibility, we cannot properly relegate our task to the judicial guardians of the federal Constitution, but instead must recognize our personal obligation to exercise independent legal judgment in ascertaining the meaning and application of state constitutional provisions." fn. 5

It is from this perspective that we must analyze plaintiffs' claims that the statutes in question are invalid under the California Constitution.

3. Although the state has no constitutional obligation to provide medical care to the poor, a long line of California decisions establishes that once the state has decided to make such benefits available, it bears a heavy burden of justification in defending any provision which withholds such benefits from otherwise qualified individuals solely because they choose to exercise a constitutional right.

In analyzing the constitutionality of the challenged statutory scheme, we start from the premise, not challenged by the Attorney General, that under article I, section 1 of the California Constitution all women in this state -- rich and poor alike -- possess a fundamental constitutional right to choose whether or not to bear a child. Our court first recognized the existence of this constitutional right of procreative choice in People v. Belous (1969) 71 Cal.2d 954 [80 Cal.Rptr. 354, 458 P.2d 194], four years before the United States Supreme Court in Roe v. Wade (1973) 410 U.S. 113 [35 L.Ed.2d 147, 93 S.Ct. 705] acknowledged the existence of a comparable constitutional right under the federal Constitution.

In 1972, moreover, the people of this state specifically added the right of "privacy" to the other inalienable rights of individuals enumerated in article I, section 1 of the state Constitution. fn. 6 The federal constitutional right of privacy, by contrast, enjoys no such explicit constitutional **[29 Cal.3d 263]** status. Consequently, in City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123 [164 Cal.Rptr. 539, 610 P.2d 436], this court recently refused to rely on federal precedent to restrict the ambit of the California right of privacy. The federal right, we noted, "appears to be narrower than what the voters approved in 1972 when they added 'privacy' to the California Constitution." (27 Cal.3d at p. 130, fn. 3.)

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[2] The Attorney General concedes that under article I, section 1 the state has no authority directly to prohibit rich or poor women from exercising their right of procreative choice as they see fit. He argues, however, that the state violates no constitutional precept when it does not directly prohibit the protected activity but simply declines to extend a public benefit -- in this case publicly funded medical care -- to those who choose to exercise their constitutional right in a manner the state does not approve and does not wish to subsidize.

This court faced a nearly identical legal contention in a different factual context over 30 years ago in Danskin v. San Diego Unified Sch. Dist. (1946) 28 Cal.2d 536 [171 P.2d 885]. In Danskin the state had established a general program under which private organizations were permitted to utilize public school buildings for public meetings, but had structured the program so as to exclude "subversive elements" from the use of such school property. In defending the statutory scheme, the government argued, as the Attorney General does here, that since the state was under no constitutional obligation to make school buildings available to private organizations, it was free to permit or withhold access to such facilities as it saw fit in order to avoid "subsidizing" the exercise of subversive ideas it did not wish to encourage.

In Danskin, Justice Traynor -- writing for the court -- rejected the state's argument in no uncertain terms: "The state is under no duty to make school buildings available for public meetings. [Citations.] If it elects to do so, however, it cannot arbitrarily prevent any members of the public from holding such meetings. [Citations.] Nor can it make the privilege of holding them dependent on conditions that would deprive any members of the public of their constitutional rights. A state is without power to impose an unconstitutional requirement as a condition for granting a privilege even though the privilege is use of state property. [Citations.] [¶] Since the state cannot compel 'subversive elements' directly to renounce their convictions and affiliations, it cannot make such a renunciation a condition of receiving the privilege of free assembly in a school building." (28 Cal.2d at pp. 545-546.) **[29 Cal.3d 264]**

In more than three decades that have passed since the Danskin decision, both this court and the California Courts of Appeal have applied the legal principles underlying Danskin in a wide variety of factual settings, involving a host of different "public benefit" programs which conditioned the receipt of benefits on the waiver or forfeiture of a broad range of constitutional rights. As these numerous decisions teach, the Danskin principles apply whether the public benefit program at issue is access to a public forum, fn. 7 public employment, fn. 8 welfare benefits, fn. 9 public housing, fn. 10 unemployment benefits fn. 11 or the use of public property fn. 12 and whether the constitutional right singled out for discriminatory treatment is the right of free speech, fn. 13 or, as in this case, the right of privacy. fn. 14 In these varying contexts, California courts have repeatedly rejected the argument that because the state is not obligated to provide a general benefit, it may confer such a benefit on a selective basis which excludes certain recipients solely because they seek to exercise a constitutional right. fn. 15 **[29 Cal.3d 265]**

Our decision in Bagley v. Washington Township Hospital Dist., supra, 65 Cal.2d 499 served as a touchstone for many of these crucial precedents. (See, e.g., Vogel, supra, 68 Cal.2d 18 ; Parrish, supra, 66 Cal.2d 260 ; City of Carmel-by-the-Sea, supra, 2 Cal.3d 259 ; Finot, supra, 250 Cal.App.2d 189 .) In Bagley, plaintiff, a nurse's aide employed by the defendant hospital district, was discharged when she refused to discontinue her off-duty pamphletting and petition circulating activities in support of an election campaign to recall several of the hospital district's directors. The district defended the discharge by reference to a Government Code section which provided broadly that "[n]o ...

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employee ... of a local agency ... shall take an active part in any campaign ... for or against any ballot measure relating to the recall of any elected official of the local agency." (Former Gov. Code, § 3205.) In Bagley, our court rejected the district's defense and struck down the statute on constitutional grounds.

In reaching our conclusion in Bagley, we drew upon the cited prior holdings involving conditional benefit programs and on scholarly legal commentaries fn. 16 to construct a framework for judicial analysis of restrictions, like those here at issue, which exclude from government benefit programs potential recipients solely on the basis of their exercise of constitutional rights. Stressing that the "government bears a heavy burden of demonstrating the practical necessity" for such unequal treatment (65 Cal.2d at p. 505), our court in Bagley established a three-part standard that the state must satisfy to justify such a scheme.

First, we held that "[the state] must establish that the imposed conditions relate to the purpose of the legislation which confers the benefit or privilege." (65 Cal.2d at pp. 505-506.) Second, we declared that "[n]ot only must the conditions annexed to the enjoyment of a publicly conferred benefit reasonably tend to further the purpose sought by conferment of that benefit, but also the utility of imposing the conditions must manifestly outweigh any resulting impairment of constitutional rights." (Id., at p. 506.) Third, and finally, we established that "in imposing conditions upon the enjoyment of publicly conferred **[29 Cal.3d 266]** benefits, as in the restriction of constitutional rights by more direct means, the state must establish the unavailability of less offensive alternatives and demonstrate that the conditions are drawn with narrow specificity, restricting the exercise of constitutional rights only to the extent necessary to maintain the integrity of the program which confers the benefits." (Id., at p. 507.)

In attempting to avoid the analytical scrutiny mandated in California by the Danskin-Bagley line of decisions, the Attorney General relies on the recent federal decision in McRae. The Attorney General is simply mistaken, however, in suggesting that the federal approach to unconstitutional conditions corresponds to the California standard established by the Danskin-Bagley line of cases. Indeed, a comparison of several recent California and United States Supreme Court decisions demonstrates quite vividly the divergence between state and federal constitutional doctrine in this realm.

In Parrish v. Civil Service Commission, supra, 66 Cal.2d 260 , for example, this court applied the Bagley standard in evaluating the constitutionality of a government practice of conditioning the receipt of welfare benefits upon a recipient's waiver of his constitutional right of privacy in his home. Because the government could not satisfy the Bagley test, we held the practice unconstitutional. In Wyman v. James (1971) 400 U.S. 309 [27 L.Ed.2d 408, 91 S.Ct. 381], by contrast, the United States Supreme Court subjected a similar governmental intrusion upon the rights of welfare recipients to a lesser degree of scrutiny, and -- contrary to our Parrish decision -- upheld the government policy against constitutional challenge.

Similarly, in Wirta v. Alameda-Contra Costa Transit Dist., supra, 68 Cal.2d 51 , our court, applying the principles of Danskin and Bagley, struck down a discriminatory public transit advertising policy which made advertising space on public buses available for commercial expression but denied this "public benefit" to those who wished to advertise their views upon noncommercial, political subjects. In Lehman v. City of Shaker Heights (1974) 418 U.S. 298 [41 L.Ed.2d 770, 94 S.Ct. 2714], however, the United States Supreme Court, when faced with the identical issue presented in Wirta, declined to engage in the demanding scrutiny called for by the California precedents and sustained the unequal advertising policy under the federal Constitution. **[29 Cal.3d 267]**

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Finally, our court, in Bagley itself and in Fort v. Civil Service Commission (1964) 61 Cal.2d 331 [38 Cal.Rptr. 625, 392 P.2d 385], tested the constitutionality of limitations on the political activities of public employees by stringent standards and found broadly worded restrictions on such activities to be unconstitutional. In United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers (1973) 413 U.S. 548 [37 L.Ed.2d 796, 93 S.Ct. 2880], however, the United States Supreme Court applied a less demanding standard and upheld comparably broad restrictions on political activities of federal employees.

As these cases indicate, for at least the past decade the federal decisions in this area have not been a reliable barometer of the governing California constitutional principles. Indeed, an examination of McRae itself plainly demonstrates that the McRae majority, in refusing to closely scrutinize the discriminatory Medicaid funding scheme, relied on factors which have no bearing on our task in applying California law.

First, the McRae court conceptualized the selective funding program as placing no additional "obstacles in the path of a woman's exercise of her freedom of choice" (448 U.S. at p. 316 [65 L.Ed.2d at p. 804, 100 S.Ct. at p. 2688]) but simply leaving "an indigent woman with at least the same range of choices in deciding whether to obtain a medically necessary **abortion** as she would have had if Congress had chosen to subsidize no health care costs at all." (Id.) This reasoning which was central to the McRae decision, cannot be reconciled with the analysis adopted in the Danskin-Bagley line of decisions. fn. 17

In Danskin itself, for example, the government, by providing a public forum for nonsubversive groups, did not place any additional obstacle in the path of subversive groups who wanted to hold meetings in private buildings, public parks, or any other previously available forum. Nonetheless, our court held that the discriminatory aspect of the government's benefit program rendered it unconstitutional. Similarly, in Parrish, the condition which was placed on the receipt of welfare benefits posed no additional threat to the privacy rights of those who did not **[29 Cal.3d 268]** seek such benefits; we recognized, however, that the limitation would, in fact, impair the constitutional rights of would-be recipients and accordingly tested it by the standard announced in Bagley.

Indeed, the entire Danskin-Bagley doctrine is concerned solely with the validity of conditional prerequisites for the receipt of various benefits which the government has no obligation to provide. In all of these cases, it may be said that the limitation or condition at issue creates no "additional" obstacle to the exercise of rights, for a recipient unhappy with any such condition is always free -- at least theoretically -- to go without the public benefit in question. The California courts, however, have acknowledged both the practical importance of many governmental benefits to individual recipients and the corresponding likelihood that a discriminatory benefit program will effectively nullify important constitutional rights. Thus, California holdings uniformly confirm that the absence of an "additional obstacle" to the exercise of one's constitutional rights does not eliminate the government's burden of demonstrating the propriety of the condition or limitation under the Bagley test.

The Attorney General finds dictum in McRae on which he erects two additional arguments against our reliance upon the California doctrine of unconstitutional conditions. First, he argues that we should draw a distinction between a measure which denies other governmental benefits to women who choose to have an **abortion** and one which simply denies funding for the **abortion** itself. fn. 18 The former measure, he suggests, imposes an unconstitutional penalty; the latter merely withholds funding for actions which the state does not want to subsidize.

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The proffered distinction does not conform to California precedent. In Danskin itself, for example, the challenged provisions did not broadly disqualify subversive elements from a wide range of benefits, but rather withheld a single benefit -- the use of public schools as a forum -- from those who wanted to use those facilities to exercise constitutional rights the state did not desire to subsidize. Similarly, under the California cases, the state could not escape application of the Bagley standard **[29 Cal.3d 269]** if, instead of denying all welfare benefits to recipients who marry someone of another race, the state provided free marriages for poor intraracial couples but declined to extend that "single benefit" to poor interracial couples. (See The Supreme Court, 1976 Term (1977) 91 Harv.L.Rev. 70, 144. See also Binet-Montessori, Inc. v. San Francisco Unified School Dist., supra, 98 Cal.App.3d 991 , 995.) Under Danskin-Bagley principles, whenever the state conditions the receipt of a benefit upon the waiver of a constitutional right or discriminatorily withholds such a benefit from individuals who exercise such right, the state must demonstrate the propriety of the condition in terms of the governing three-part test.

The Attorney General also draws upon McRae's analogy (see 448 U.S. at p. 318 [65 L.Ed.2d at p. 805, 100 S.Ct. at pp. 2688-2689]) between the state's decision to fund childbirth but not **abortion** and its decision to fund public education but not "private education." In the decisions recognizing a constitutional right to obtain a private education upon which the ostensible analogy rests, however, the principal question presented was whether the state could compel all children to attend state-run schools; these decisions concluded that the state could not. (See, e.g., Pierce v. Society of Sisters (1925) 268 U.S. 510 [69 L.Ed. 1070, 45 S.Ct. 571, 39 A.L.R. 468].) An analogous medical care case would arise if a state law requiring, for example, that all medical care be obtained from a public hospital clashed with an individual's asserted constitutional right to reject state-provided medical care in favor of medical care that he himself chooses. In the present case, of course, no such constitutional right is at issue because the statutory scheme in question does not interfere with an individual's right to go elsewhere for medical care.

Thus, the Attorney General's attempted analogy is misleading. It is obvious, of course, that the state, in providing a benefit such as public education, is not thereby compelled to pay the costs incurred by those who choose to relinquish the public benefit in favor of a comparable privately funded benefit. Danskin itself, for example, does not suggest that the state in making public schools available as a public forum, obligated itself to reimburse those who chose to exercise their First Amendment right by speaking in private meeting halls or, indeed, by refraining from speaking at all.

In short, the Danskin-Bagley line of cases is not concerned with a person's liberty to reject an offered public benefit in favor of a private **[29 Cal.3d 270]** counterpart -- the issue in the private school cases. Instead, Danskin and Bagley hold that when the state implements a general public benefit program, the California Constitution imposes definite limitations on the state's ability to offer such a benefit in a fashion which discriminates against the exercise of constitutional rights. The statutory program at issue here does afford medical care on just such a selective or discriminatory basis. fn. 19

Accordingly, in evaluating the constitutionality of the challenged statutory provisions under the California Constitution, we employ the test established by the California unconstitutional condition cases.

4. Under the constitutional standard established in Bagley, the statutory provisions which discriminatorily deny generally available medical benefits to poor women solely because they choose to have an **abortion** are unconstitutional.

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[3a] As noted previously, Bagley posits a threefold inquiry: (1) whether the conditions which are imposed relate to the purposes of the legislation which provide the benefit; (2) whether the utility of the conditions imposed clearly outweighs the resulting impairment of constitutional rights; and (3) whether there are no less offensive alternatives available to achieve the state's objective. We follow these avenues of inquiry, placing particular emphasis upon the second prong of the test in which we must weigh the utility of the funding restrictions against the resulting impairment to the woman's right of procreative choice. **[29 Cal.3d 271]**

(a) The restrictions imposed on poor women's right of procreative choice do not relate to the purposes of the Medi-Cal program.

As noted above, Bagley provides that, as an initial matter, the state "must establish that the imposed conditions relate to the purposes of the legislation which confers the benefit or privilege." (65 Cal.2d at pp. 505-506.) Elaborating on this requirement in Bagley, we quoted with approval Justice Frankfurter's observation that "Congress may withhold all sorts of facilities for a better life, but if it affords them it cannot make them available in an obviously arbitrary way or exact surrender of freedoms unrelated to the purpose of the facilities." (Italics added.) (American Communication Assn. v. Douds (1950) 339 U.S. 382, 417 [94 L.Ed. 925, 70 S.Ct. 674] (separate opinion).)

In most of the California public benefit cases, the restrictions on constitutional rights adopted as part of the government programs have borne at least some relation to the purpose of the program. Thus, for example, in cases such as Bagley that involved restrictions on the exercise of First Amendment activities by those who obtain the "benefit" of public employment, the restrictions were apparently intended to curtail activities thought to have a potential for interfering with the effective performance of the public employee's job. Similarly, in Parrish, the restrictions imposed on welfare recipients' right of privacy related to the elimination of fraud in the welfare system and thus again could be said to further the aims of the benefit program in question.

In the instant case, by contrast, the restriction imposed on poor women who seek to exercise their constitutional right to decide whether or not to have a child bears no relation whatsoever to the fundamental purposes of the Medi-Cal program. Welfare and Institutions Code section 14000 declares that "[t]he purpose [of the Medi-Cal program] is to afford health care and related remedial or preventive services to recipients of public assistance and to medically indigent aged and other persons ..."; fn. 20 thus, the program's primary objective is to alleviate the **[29 Cal.3d 272]** hardship and suffering incurred by those who cannot afford needed medical care by enabling them to obtain such medical treatment. The restrictions at issue here directly impede this fundamental purpose. Even when an **abortion** represents the appropriate medical treatment for a poor pregnant woman, the statute virtually bars payment for that treatment and thus subjects the poor woman to significant health hazards and in some cases to death. fn. 21

In this respect, the state's denial of Medi-Cal funds to otherwise qualified women solely because they choose to have an **abortion** bears a marked similarity to the Los Angeles Housing Authority's policy of **[29 Cal.3d 273]** excluding so-called subversive persons from public-supported low-rent housing projects, a policy that was invalidated by a California decision over 25 years ago in Housing Authority v. Cordova (1955) 130 Cal.App.2d Supp. 883 [279 P.2d 215]. In finding that exclusionary policy unconstitutional, the Cordova court explained: "'The purpose of the [housing act] is to eradicate slums and provide housing for persons of low-income class. [Citation.] It is evident that the exclusion of otherwise qualified persons solely because of membership in organizations designated as subversive

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by the Attorney General has no tendency whatever to further such purpose.'" (130 Cal.App.2d Supp., at p. 888.)

The state can show a relationship between the Budget Act limitations and the purpose of the Medi-Cal program only by claiming that Medi-Cal seeks not only to provide necessary health care to indigents but also to protect the life and health of the fetus. Any attempt to reconcile Medi-Cal objectives with **abortion** limitations on the theory that the latter protect the fetus, however, impermissibly denigrates the woman's right of choice.

As we explain in discussing the second part of the Bagley test, both California and federal authorities establish that, at least prior to viability, the state may not subordinate a woman's own medical interests or her right of procreative choice to the interests of the fetus. We therefore turn to consider the second part of the Bagley test.

(b) In light of the fundamental and intimate nature of the constitutional right of procreative choice and the severe impairment of that right that will in practice result from the statutory restrictions at issue, the utility of imposing such restrictions does not "manifestly outweigh [the] resulting impairment of constitutional rights."

Under the second part of Bagley, the state must demonstrate that "the utility of imposing the conditions ... manifestly outweigh[s] any resulting impairment of constitutional rights." (65 Cal.2d at p. 506.) As numerous cases since Bagley have elaborated, a court in undertaking this "weighing" or "balancing" process must realistically assess the importance of the state interest served by the restrictions and the degree to which the restrictions actually serve such interest; further the court must carefully evaluate the importance of the constitutional right at stake and gauge the extent to which the individual's ability to exercise that right is threatened or impaired, as a practical matter, by the **[29 Cal.3d 274]** specific statutory restrictions or conditions at issue. (See, e.g., Parrish v. Civil Service Commission, supra, 66 Cal.2d 260 , 270-274; City of Carmel-by-the-Sea v. Young, supra, 2 Cal.3d 259 , 265-272; Finot v. Pasadena City Bd. of Education, supra, 250 Cal.App.2d 189 , 196-202.) We must canvass the various factors on each side of the scale in order to determine whether the utility of the restrictions "manifestly outweighs" the resulting impairment of constitutional rights. (See generally O'Neil, op. cit. supra, 54 Cal.L.Rev. 443, 460-478; Comment, Another Look at Unconstitutional Conditions (1968) 117 U.Pa.L.Rev. 144.)

In undertaking this analysis, we begin by examining the nature and importance of the constitutional right at issue, and then consider the degree to which this right is actually threatened by the challenged statutory scheme. In People v. Belous, supra, 71 Cal.2d 954 , the seminal California case in this area, we recognized that the constitutional rights at stake are in essence twofold: "The rights involved ... are the woman's rights to life and to choose whether to bear children." (Id., at p. 963.) The first right is implicated because the choice between childbirth and **abortion** in some instances involves potential risks to the life of the pregnant woman. Moreover, even when a life-threatening condition is not present, the constitutional choice directly involves the woman's fundamental interest in the preservation of her personal health. As this court stated in Ballard v. Anderson (1971) 4 Cal.3d 873 , 879 [95 Cal.Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392]: "In California, law and medicine recognize that therapeutic **abortion** is a legitimate medical treatment which may be necessary for the preservation of a pregnant woman's life and health."

Closely related to this fundamental interest in life and health is the basic recognition that, for a woman, the constitutional right of choice is essential to her ability to retain personal control over her

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own body. As Professor Tribe has observed: "If a man is the involuntary source of a child -- if he is forbidden, for example, to practice contraception -- the violation of his personality is profound; the decision that one wants to engage in sexual intercourse but does not want to parent another human being may reflect the deepest of personal convictions. But if a woman is forced to bear a child -- not simply to provide an ovum but to carry the child to term -- the invasion is incalculably greater .... [I]t is difficult to imagine a clearer case of bodily intrusion, even if the original conception was in some sense voluntary." (Tribe, American Constitutional Law (1977) § 15-10, p. 924.) **[29 Cal.3d 275]**

[4] Moreover, as Belous makes clear, the restriction at issue undermines the right of privacy guaranteed under our California Constitution in that it threatens not only the woman's interests in life, health, and personal bodily autonomy but also her right to decide for herself whether to parent a child: "The fundamental right of the woman to choose whether to bear children follows from the Supreme Court's and this court's repeated acknowledgment of a 'right of privacy' or 'liberty' in matters related to marriage, family, and sex." (71 Cal.2d at p. 963.)

The Supreme Court has defined the woman's right to choose as an aspect of the privacy right in even more explicit terms: "[I]f the right of privacy means anything, it is the right of the individual ... to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." (Original italics.) (Eisenstadt v. Baird (1972) 405 U.S. 438, 453 [31 L.Ed.2d 349, 362, 92 S.Ct. 1029].) This right of personal choice is central to a woman's control not only of her own body, but also to the control of her social role and personal destiny. (See Karst, The Supreme Court, 1976 Term -- Forward Equal Citizenship Under the Fourteenth Amendment (1977) 91 Harv.L.Rev. 1, 57-58.) As Professor Karst has recently observed: "The implications of an unwanted child for a woman's education, employment opportunities and associational opportunities (often including marriage opportunities) are of enormous proportion." (Karst, The Freedom of Intimate Association (1980) 89 Yale L.J. 624, 641, fn. 90.)

[3b] Thus, the constitutional rights at issue here are clearly among the most intimate and fundamental of all constitutional rights. With that understanding in mind, we must consider the extent to which the statutory limitations in controversy will actually impair the individual's exercise of these vitally important constitutional rights.

In resolving that issue, we need only consider the nature of the program in question to recognize that the actual impairment of constitutional rights will be severe indeed. The medical benefits provided by the Medi-Cal program are available only to poor persons who are unable to pay for their own health care; by definition, then, the only women affected by the restrictions at issue are those who lack the money or resources to pay for a medically supervised **abortion** on their own. Although it may be possible for some poor women to obtain medical abortions with the help of private charities, the existence of the **[29 Cal.3d 276]** Medi-Cal program itself testifies to the fact that private charitable resources do not suffice to meet the medical needs of the poor. Thus, from a realistic perspective, we cannot characterize the statutory scheme as merely providing a public benefit which the individual recipient is free to accept or refuse without any impairment of her constitutional rights. On the contrary, the state is utilizing its resources to ensure that women who are too poor to obtain medical care on their own will exercise their right of procreative choice only in the manner approved by the state.

In this respect, the impairment of constitutional rights resulting from the present statutory restrictions is significantly greater than the impairment of rights involved in almost all the past California cases in this field. In Danskin, for example, while the discriminatory benefit scheme denied disfavored persons

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the use of public school buildings for meetings, it did not effectively preclude them from holding meetings or disseminating their views to the public. Similarly, although the restrictive government employment policy in Bagley directly impinged upon the public employee's free speech rights in significant respects, it nonetheless left the employee free to engage in much political activity. In the instant case, by contrast, the state's discriminatory treatment will prevent the vast majority of poor women from exercising their constitutional right to choose whether or not to bear a child. As Justice Brennan has observed, "By funding all of the expenses associated with childbirth and none of the expenses incurred in terminating pregnancy, the government literally makes an offer that the indigent woman cannot afford to refuse." (McRae, 448 U.S. at pp. 333-334 [65 L.Ed.2d at p. 815, 100 S.Ct. at p. 2704] (dis. opn.).)

Having found that the statutory restrictions in question will severely impair or totally deny the actual exercise of this intimate and fundamental constitutional right, we must determine whether the benefits which the state derives from the restrictions "manifestly outweigh" such significant impairment. Obviously, in view of the foregoing discussion, only the most compelling of state interests could possibly satisfy this test. As we shall see, however, it is doubtful whether the restrictions in this case serve any constitutionally legitimate, let alone compelling state interest; furthermore, the interest that the statute does serve is furthered in an underinclusive and discriminatory manner. fn. 22 **[29 Cal.3d 277]**

We begin by identifying the precise state interest that is served by the statutory restrictions at issue. We note that although the restrictions take the form of curtailing state expenditures, they do not in reality serve the state's legitimate interest in conserving its limited fiscal resources; whatever money is saved by refusing to fund abortions will be spent many times over in paying maternity care and childbirth expenses and supporting the children of indigent mothers. fn. 23 In the first place, the cost of an **abortion** is much less than the cost of maternity care and delivery. fn. 24 Thus, the present statutory scheme, by withholding funds for abortions, requires the state to pay the more expensive childbirth expenses for every poor woman or teenager who becomes pregnant. fn. 25

Second, because the present statutes frequently deny funding of abortions to women who face special medical risks if they carry a fetus to term, such limitations -- under the current comprehensive Medi-Cal scheme -- will oblige the state to provide additional and often expensive medical care for such women before, during, and after childbirth. But for the challenged restrictions, such expenses would not have been incurred. Finally, this limitation on poor women's constitutional rights will prove enormously expensive in terms of long-range economic costs. As Justice Blackmun has observed: "[T]he cost of [a]n ... **abortion** ... holds no comparison whatsoever with the welfare costs that will burden **[29 Cal.3d 278]** the State for the new indigents and their support in the long, long years ahead." (Beal v. Doe (1977) 432 U.S. 438, 463 [53 L.Ed.2d 464, 483, 97 S.Ct. 2366] (dis. opn.).) fn. 26

The Attorney General and amici suggest, however, that the restrictions on the funding of abortions through Medi-Cal relate to a state interest alternatively defined as an interest in "encouraging childbirth" or an interest in "protecting the potential life of the fetus." As far as the interest in "encouraging childbirth" is concerned, the California Legislature has not embraced a general policy of encouraging unwanted children; under the present provisions of the Medi-Cal program, for example, funds are specifically authorized to pay for the medical expense of contraception and sterilization. Furthermore, as we explain in the following section, to the extent that the challenged provisions are defended as simply a method of aiding poor women who want to bear children, the provisions clearly do not serve that interest in a manner least offensive to the rights of women who choose not to bear children.

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That brings us to the state interest in "protecting the potential life of the fetus," an objective which we think does realistically underlie the **[29 Cal.3d 279]** funding restrictions at issue here. There is no question, of course, that phrased in general terms the state has a legitimate interest in protecting the potential life of a fetus. Thus, the state may without doubt legitimately prosecute a person who deliberately injures a fetus, even if no corresponding harm befalls the woman who carries the fetus. In the instant case, however, the state is not merely proposing to protect a fetus from general harm, but rather is asserting an interest in protecting a fetus vis-a-vis the woman of whom the fetus is an integral part. Such a claimed interest, of course, clashes head-on with the woman's own fundamental right of procreative choice.

The argument that the state advances here essentially parallels that presented to the United States Supreme Court in Roe v. Wade, supra, 410 U.S. 113, when the State of Texas argued that its asserted interest in protecting the fetus justified criminal proscriptions on **abortion**. The high court carefully examined and weighed the interests implicated by this contention: the woman's interest in deciding for herself a matter which so intimately and fundamentally affects her future life and happiness; her interest in protecting her own life and health; the corresponding state interest in safeguarding the woman's life and health; and, finally, the state's interest in protecting the fetus. After an extensive review of the history of **abortion** laws and consideration of the medical risks of **abortion** and childbirth, the court held that during the first two trimesters of pregnancy, when the fetus is not viable, the state's interest in protecting the fetus is not of compelling character. Consequently, the court concluded, the state may not subordinate the woman's fundamental right of procreative choice to the state's interest in protecting a nonviable fetus.

Roe v. Wade went on to explain the extent and purpose for which state regulation of **abortion** is permissible. Prior to the third trimester of pregnancy, it held, the state may regulate only to protect the woman's health -- not to protect the fetus. In the third trimester the state may enact restrictions to protect the fetus, but may not proscribe abortions necessary to preserve the woman's life or health. (410 U.S. at pp. 164-165 [35 L.Ed.2d at p. 183].)

The restrictions of the California Budget Act do not conform to the careful calculation of competing rights and interests set out in Roe v. Wade. The Budget Act seeks to limit first and second trimester abortions, not for the permissible purpose of protecting the woman's health, **[29 Cal.3d 280]** but to protect the fetus. The act thus inverts the priority of interests established in Roe and improperly subordinates the woman's right of choice to the lesser state interest in protecting a nonviable fetus. Furthermore, although Roe v. Wade recognized a compelling interest in protecting a viable fetus, even that interest cannot be invoked to restrict abortions necessary to preserve the woman's health; the Budget Act, however, gives no consideration to danger to the woman's health unless the threatened harm is severe, long-lasting, and relates to physical health.

In short, Roe v. Wade settled that protection of a nonviable fetus is not a compelling state interest. The subsequent high court decision in McRae does not detract from that holding. McRae did not measure the restrictions at issue against a compelling interest test. Rather, the Supreme Court assumed that a discriminatory withholding of government benefits, because it imposes no new obstacle to **abortion**, required only minimal justification. That proposition, as we have explained, is inconsistent with California constitutional law. The assumption underlying the high court's analysis, however -- that funding restrictions would fail if required to meet a compelling interest standard -- provides further support for our decision today.

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Neither do California decisions support the Attorney General's claim. We considered the state's asserted interest in protecting fetal life in People v. Belous, supra, 71 Cal.2d 954 , holding unconstitutionally vague a statute which barred abortions unless necessary to preserve the mother's life. At the outset, we stressed that a woman's right to choose may be infringed only by regulations necessary to further a compelling interest. (See 71 Cal.2d at p. 964.) Although the state urged that it had "a compelling interest in the protection of the embryo and fetus and that such interest warrants the limitation on the woman's constitutional rights" (pp. 967-968), we replied that the asserted state interest derived from statutes and rules which either "require a live birth or reflect the interest of the parents." (Id.)

We have already noted that three years after People v. Belous, the people of California amended our state Constitution to provide explicit protection for the right of privacy, a protection not found in the federal text. We have noted also that the federal right of privacy, the foundation for the decision in Roe v. Wade, supra, 410 U.S. 113, is more **[29 Cal.3d 281]** limited than the corresponding right in the California Constitution. (See City of Santa Barbara v. Adamson, supra, 27 Cal.3d 123 , 130, fn. 3.) We therefore conclude that the protection afforded the woman's right of procreative choice as an aspect of the right of privacy under the explicit provisions of our Constitution is at least as broad as that described in Roe v. Wade. Consequently, we further conclude that the asserted state's interest in protecting a nonviable fetus is subordinate to the woman's right of privacy.

Moreover, even if the state could assert a compelling interest in protecting a nonviable fetus, we would have grave doubts that the state could pursue such interest in the discriminatory fashion adopted here. Under the present statutory scheme, the state has not undertaken to protect the potential life of all fetuses by promoting their interests over the constitutional rights of all women. Instead, by implementing this state interest through restrictions on Medi-Cal funds rather than through more broadly applicable legislation, the state has singled out poor women and has subordinated only their constitutional right of procreative choice to the concern for fetal life.

In the past, this court has been particularly critical of statutory mechanisms that restrict the constitutional rights of the poor more severely than those of the rest of society. (See, e.g., Serrano v. Priest (1976) 18 Cal.3d 728 , 765-767 [135 Cal.Rptr. 345, 557 P.2d 929]; Serrano v. Priest (1971) 5 Cal.3d 584 , 597-604 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187]; In re Antazo (1970) 3 Cal.3d 100 , 108-112 [89 Cal.Rptr. 255, 473 P.2d 999].) Thus, we have implicitly recognized that the indigent poor share many characteristics of other "insular minorities" who may not be adequately protected from discriminatory treatment by the general safeguards of the legislative process. (See generally U.S. v. Carolene Products Co. (1938) 304 U.S. 144, 152-153, fn. 4 [82 L.Ed. 1234, 1241-1242, 58 S.Ct. 778].) Although prior cases have generally considered this factor in connection with equal protection analysis, Professor O'Neil has identified its relevance to the unconstitutional condition doctrine: limitations upon governmental benefits which apply to rich and poor alike are obviously less invidious than conditions, like those at issue here, in which the state effectively tells a poor woman "that because [she] is poor ... [she] must restrict [her exercise of constitutional rights] in ways that the government does not ask self-sufficient people to do." (O'Neil, **[29 Cal.3d 282]** Unconstitutional Conditions: Welfare Benefits With Strings Attached, supra, 54 Cal.L.Rev. 443, 472.) fn. 27

From this review of the factors which enter into the Bagley analysis, we conclude that the alleged "benefits" which flow from the statutory restrictions on Medi-Cal funds in no sense "manifestly outweigh" the resulting impairment of constitutional rights. As we have seen, the state is hard-pressed

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to demonstrate that the restrictions further any constitutionally legitimate interests at all; at the same time, the restrictions effectively nullify the poor woman's fundamental constitutional right to retain personal control over her own body and her own destiny. The challenged statutory scheme, then, clearly does not pass muster under the second part of the Bagley standard.

(c) The statutory scheme does not serve the state interest in providing medical care for indigents in a manner least offensive to the woman's right of procreative choice.

The third and final component of the constitutional standard established in Bagley requires the state to "establish the unavailability of less offensive alternatives and [to] demonstrate that the conditions are drawn with narrow specificity, restricting the exercise of constitutional rights only to the extent necessary to maintain the integrity of the program which confers the benefits." (65 Cal.2d at p. 507.) In effect, this part of the Bagley test requires the state to adopt the "least offensive alternative" adequate to achieve any legitimate state interest. fn. 28 **[29 Cal.3d 283]**

If we view the Budget Act restrictions as intended to prevent indigent women from obtaining abortions, the doctrine of "least offensive alternative" plays no role; the restrictions fail because the state's interest in protecting the fetus cannot be pursued by subordinating the woman's right of procreative choice. In an effort to avoid the unconstitutionality of the funding restrictions, however, the Attorney General suggests an alternative interpretation: he argues that the restrictions should not be considered a legislative attempt to prevent the poor from obtaining abortions, but rather as an effort to aid poor women who have already decided to bear a child but cannot afford the expenses of childbirth. That argument, however, fails the "least restrictive alternative" test, since the state could readily meet the needs of indigent women without burdening their right of procreative choice simply by funding impartially the expenses of childbirth and **abortion**. fn. 29

Moreover, the legislative background of the statute in question belies the Attorney General's suggestion that the legislation was aimed solely at aiding poor women who have already chosen to bear a child. The Budget Act provisions do not increase preexisting levels of childbirth-related benefits or provide any additional aid at all to poor women who choose to bear a child. Instead, the statute simply curtails the medical benefits previously available to poor women who desire to have an **abortion**. Quite clearly, this legislation cannot be defended as aiding poor women who wish to have children by the means least offensive to the constitutional rights of other women. **[29 Cal.3d 284]**

5. Conclusion.

As noted at the outset, our opinion in this case does not rest upon this court's views as to the morality or immorality of **abortion**. The morality of **abortion** is not a legal or constitutional issue; it is a matter of philosophy, of ethics, and of theology. It is a subject upon which reasonable people can, and do, adhere to vastly divergent convictions and principles. fn. 30

By virtue of the explicit protection afforded an individual's inalienable right of privacy by article I, section 1 of the California Constitution, however, the decision whether to bear a child or to have an **abortion** is so private and so intimate that each woman in this state -- rich or poor -- is guaranteed the constitutional right to make that decision as an individual, uncoerced by governmental intrusion. Because a woman's right to choose whether or not to bear a child is explicitly afforded this constitutional protection, in California the question of whether an individual woman should or should not terminate her pregnancy is not a matter that may be put to a vote of the Legislature.

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If the state cannot directly prohibit a woman's right to obtain an **abortion**, may the state by discriminatory financing indirectly nullify that constitutional right? Can the state tell an indigent person that the state will provide him with welfare benefits only upon the condition that he join a designated political party or subscribe to a particular newspaper that is favored by the government? Can the state tell a poor woman that it will pay for her needed medical care but only if she gives up her constitutional right to choose whether or not to have a child?

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper. Once the state furnishes medical care to poor women in general, it cannot withdraw part of that care **[29 Cal.3d 285]** solely because a woman exercises her constitutional right to choose to have an **abortion**. fn. 31

Indeed, the statutory scheme before us is all the more invidious because its practical effect is to deny to poor women the right of choice guaranteed to the rich. fn. 32 An affluent woman who desires to terminate her pregnancy enjoys the full right to obtain a medical **abortion**, regardless of the opposition of any legislative majority. By contrast, when the state finances the costs of childbirth, but will not finance the termination of pregnancy, it realistically forces an indigent pregnant woman to choose childbirth even though she has the constitutional right to refuse to do so.

Thus, we conclude that the restrictions in question are invalid under the California Constitution. We note that the Supreme Judicial Court of Massachusetts has very recently reached precisely the same conclusion in adjudicating the validity of a comparable state statute against the guarantees of that state's Constitution. (Moe v. Secretary of Administration & Finance (1981) ___ Mass. ___ [417 N.E.2d 387].) As the Massachusetts high court observed, although "the Legislature need not subsidize any of the costs associated with childbearing, or with health care generally ... once it chooses to enter the constitutionally protected area of choice, it must do so with genuine indifference. It may not weight the options open to the pregnant woman by its allocation of public funds; in this area, government is not free to 'achieve with carrots what [it] is forbidden to achieve with sticks.' L. Tribe, American Constitutional Law, § 15-10 at p. 933 n. 77 (1978)." (Id., at p. 402.)

In S.F. 24069, the judgment is reversed. In S.F. 24053, the alternative writ, having served its purpose, is discharged and the peremptory writ is denied. In S.F. 24192, a peremptory writ of mandate shall issue, directing respondents to refrain from enforcing the unconstitutional restrictions in the Budget Act of 1980 challenged herein. Plaintiffs shall recover their costs in these proceedings, including reasonable attorneys **[29 Cal.3d 286]** fees pursuant to the provisions of section 1021.5 of the Code of Civil Procedure. Because these three proceedings are inextricably interrelated, on remand of S.F. 24069 the San Francisco Superior Court shall fix an appropriate cost award, including attorneys fees, by reference to the costs and attorney services expended in all three proceedings.

Mosk, J., and Newman, J., concurred.

BIRD, C. J.,

Concurring.

If a citizen's freedom to choose how to deal with procreation -- contraception, **abortion**, or childbirth -- is a fundamental constitutional right protected by the right to privacy, may the state constitutionally

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limit that choice for poor women when their choice is not one of the methods favored by the state? I agree with the lead opinion that the answer to this question is "no." However, I would reach that conclusion by a somewhat different route.

It should be emphasized that this court is not called upon today to enter into the contemporary debate over various moral, religious, and social questions concerning **abortion**. Emotions on that subject have always run high. However, what we justices, as individuals, may think about these questions bears no relationship to the legal issue presented in this case.

That issue is a narrow one. Once the state undertakes funding of medical care for the poor, including all types of procreative care, may the state refuse funding for an unpopular but constitutionally protected alternative? There is no claim that poor women have an absolute right to **abortion** funding. Rather, petitioners argue that the state should not be able to select that choice and influence that private decision by discriminatorily denying funds for one procreative alternative which the state deems unacceptable.

It is important to note that this is not a case in which this court must decide whether **abortion** is the best alternative to pregnancy or whether **abortion** is morally justifiable. Under the California Constitution, the people of the state have decided that those value judgments must be reserved to the individual citizens whose lives are affected by such decisions. Neither legislators nor judges may constitutionally impose their system of values on a woman who must decide how to deal with procreation.

A woman who faces an unplanned pregnancy confronts a critical and uniquely important decision, the consequences of which will follow her **[29 Cal.3d 287]** throughout her life. Because her value system, her life, and her relationships with others are all involved in any determination she makes, a woman's right to decide for herself without the interference of the state is central in a free society. In recognition of the importance of that right, both this court in People v. Belous (1969) 71 Cal.2d 954 [80 Cal.Rptr. 354, 458 P.2d 194] and the Supreme Court in Roe v. Wade (1973) 410 U.S. 113 [35 L.Ed.2d 147, 93 S.Ct. 705] have held that such a private decision must be given constitutional protection.

It is unfortunate that the dissent focuses on an issue that is not even present here. The court is not appropriating public funds for anything. (Dis. opn. of Richardson, J., post, at p. 305.) The Legislature appropriated funds in its 1980 Budget Act to pay for abortions for Medi-Cal recipients in the event that its restrictions were held to be unconstitutional. fn. 1 In so doing, the Legislature signaled the fact that it harbored doubts about the constitutional validity of the restrictions.

A fundamental right has been defined as one which is "implicit in the concept of ordered liberty." (Palko v. Connecticut (1937) 302 U.S. 319, 325 [82 L.Ed. 288, 292, 58 S.Ct. 149].) It is the state's obligation to protect and safeguard these rights. If any action by the state burdens the exercise of any fundamental liberty, the state must justify such an act by a showing of compelling necessity. (E.g., People v. Belous, supra, 71 Cal.2d 954 , 963-964; Roe v. Wade, supra, 410 U.S. 113, 155-156 [35 L.Ed.2d 147, 178-179].) As the guardian of our rights, the state is required to show a critical need for any action which curbs the exercise of these freedoms. This is true whether the incursion involves a direct attack on the exercise of the right or an indirect interference with its exercise. **[29 Cal.3d 288]**

An artificial distinction between so-called direct and indirect infringements begs the question as to whether the state has infringed a fundamental right. In California, there is no precedent for permitting government to burden the exercise of vital constitutional rights without establishing a compelling

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need. The fact that the state has not banned the exercise of the right entirely is irrelevant to the basic issue. Our courts have frequently struck down restrictions that did not completely prohibit the exercise of a fundamental right. (See, e.g., Danskin v. San Diego Unified Sch. Dist. (1946) 28 Cal.2d 536 [171 P.2d 885]; Parrish v. Civil Service Commission, supra, 66 Cal.2d 260 ; Salas v. Cortez, supra, 24 Cal.3d 22 ; White v. Davis (1975) 13 Cal.3d 757 [120 Cal.Rptr. 94, 533 P.2d 222].) If the exercise of the right is burdened, a compelling interest must be shown to avoid constitutional invalidity regardless of the manner of infringement.

The fundamental right at issue is the right to private procreative choice free from governmental interference. Petitioners assert that where an individual's decision is constitutionally protected, the government is obligated to maintain a neutral stance. As Justice Brennan has observed, "[t]he proposition for which these cases stand thus is not that the State is under an affirmative obligation to ensure access to abortions for all who may desire them; it is that the State must refrain from wielding its enormous power and influence in a manner that might burden the pregnant woman's freedom to choose whether to have an **abortion**. The [restriction's] denial of public funds for medically necessary abortions plainly intrudes upon this constitutionally protected decision, for both by design and in effect it serves to coerce indigent pregnant women to bear children that they would otherwise elect not to have." (Fn. omitted; italics added.) (Harris v. McRae (1980) 448 U.S. 297, 329 [65 L.Ed.2d 784, 812, 100 S.Ct. 2671], Williams v. Zbaraz (1980) 448 U.S. 358 [65 L.Ed.2d 831, 100 S.Ct. 2694, 2702 (dis. opn. of Brennan, J.); see also, id., at pp. 349, 355 [65 L.Ed.2d at pp. 825, 829, 100 S.Ct. at pp. 2712, 2715] (dis. opn. of Stevens, J.); Moe v. Secretary of Administration & Finance, supra, 417 N.E.2d at pp. 397-404.)

The practical impact of these restrictions is to burden the right of choice. Women, who are dependent on Medi-Cal for all of their health care needs because of indigency, are effectively denied the choice of **abortion** except under the most stringent conditions approved by the state. Justice Brennan's words are once again instructive. These restrictions are "a transparent attempt by the Legislative Branch to impose **[29 Cal.3d 289]** the political majority's judgment of the morally acceptable and socially desirable preference on a sensitive and intimate decision that the Constitution entrusts to the individual. Worse yet, [the restriction] does not foist that majoritarian viewpoint with equal measure upon everyone in our Nation, rich and poor alike; rather, it imposes that viewpoint only upon that segment of our society which, because of its position of political powerlessness, is least able to defend its privacy rights from the encroachments of state-mandated morality." (Harris v. McRae, supra, 448 U.S. at p. 332 [65 L.Ed.2d at p. 814, 100 S.Ct. at p. 2703].)

I agree with the result reached in the lead opinion of this court. However, I would evaluate these restrictions under the strict judicial scrutiny test used to assess any governmental action which burdens the exercise of a fundamental right. (People v. Belous, supra, 71 Cal.2d at pp. 963-964.) fn. 2 In this case, the state must show a compelling interest to justify a curtailment of the right of privacy, a right expressly protected by the California Constitution in its Declaration of Rights (Cal. Const., art. I, § 1). (City of Santa Barbara v. Adamson (1980) 27 Cal.3d 123 , 130 [164 Cal.Rptr. 539, 610 P.2d 436]; White v. Davis, supra, 13 Cal.3d 757 , 772, 775. Cf. People v. Belous, supra, 71 Cal.2d at p. 964.) **[29 Cal.3d 290]** This compelling interest must be proven by the state whether it directly or indirectly interferes with the exercise of a fundamental right. The facts of this case illustrate how direct or indirect governmental infringement can, with equal force, stifle the assertion of a constitutionally protected right. fn. 3 (Moe v. Secretary of Administration & Finance, supra, 417 N.E.2d at pp. 397-404; see e.g., Harris v. McRae, supra, 448 U.S. at pp. 334-336 [65 L.Ed.2d at pp. 815-817, 100 S.Ct. at pp. 2704-2705] (dis. opn. of Brennan, J.). Cf. Healy v. James (1972) 408 U.S. 169, 183 [33 L.Ed.2d 266, 280-281, 92 S.Ct. 2338]; N. A. A. C. P. v. Alabama (1958) 357 U.S. 449, 460-463 [2 L.Ed.2d

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1488, 1498-1500, 78 S.Ct. 1163]; Sherbert v. Verner (1963) 374 U.S. 398, 404-406 [10 L.Ed.2d 965, 970-972, 83 S.Ct. 1790]; Danskin v. San Diego Unified Sch. Dist., supra, 28 Cal.2d 536 ; Perry, The **Abortion** Funding Cases: A Comment on the Supreme Court's Role in American Government (1978) 66 Geo.L.J. 1191, 1196, 1198 [hereinafter cited as **Abortion** Funding Cases].) Consequently, the funding restrictions by the Legislature must be judged by the same standard applicable to any direct burden placed by the state on the right of privacy. This is exactly what the Massachusetts Supreme Court did in Moe v. Secretary of Administration & Finance, supra, 417 N.E.2d 387, 397-404. **[29 Cal.3d 291]**

In California, this argument is even more compelling by virtue of this state's long history of providing substantial protection to the right of private choice in intimate affairs. Years before the federal courts adopted a similar rule nationally, the California courts recognized the right of privacy in making a decision concerning whether to carry a child to full term or to abort. (People v. Belous, supra, 71 Cal.2d at pp. 963-964.) fn. 4

Moreover, before the federal courts came to acknowledge that the freedom of choice in this intimate area of human activity involved the fundamental right of privacy, the voters of California added an express right of privacy to the state Declaration of Rights. In November 1972, article I, section 1 of the state Constitution was amended to include privacy among this state's citizens' inalienable rights. fn. 5 The election brochure given to the voters asserted that "[t]he right of privacy is the right to be left alone. It is a fundamental and compelling interest. It protects our homes, our families, our thoughts, our emotions, our expressions, our personalities, our freedom of communion, and our freedom to associate with the people we choose .... [¶] ... The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, Third, Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only where there is compelling public need." (Italics added.) **[29 Cal.3d 292]**

The proponents, in arguing for the amendment's passage, stated that, "[t]he right to privacy is much more than 'unnecessary wordage.' It is fundamental in any free society. Privacy is not now guaranteed by our State Constitution. This simple amendment will extend various court decisions on privacy to insure protection of our basic rights." fn. 6 (Italics added.)

Our Constitution and our case law have placed California in the forefront of protecting privacy rights. Consistently, decisions by our state courts involving privacy have recognized these important interests before the federal courts and have more broadly defined them. For example, in Ballard v. Anderson, supra, 4 Cal.3d 873 , this court prohibited the invasion of a minor's right of privacy when it refused to rewrite a statute to require parental consent for a minor's **abortion**. The analogous federal case, Planned Parenthood of Missouri v. Danforth (1976) 428 U.S. 52, 72-75 [49 L.Ed.2d 788, 806-808, 96 S.Ct. 2831], came to a similar conclusion some five years later. (And compare, e.g., Perez v. Sharp (1948) 32 Cal.2d 711 [198 P.2d 17] with Loving v. Virginia (1967) 388 U.S. 1 [18 L.Ed.2d 1010, 87 S.Ct. 1817] [right to marry person of one's choice irrespective of race]; In re Klor (1966) 64 Cal.2d 816 [51 Cal.Rptr. 903, 415 P.2d 791] with Stanley v. Georgia (1969) 394 U.S. 557 [22 L.Ed.2d 542, 89 S.Ct. 1243] [right to private possession of obscene material in one's home]; People v. Ramey (1976) 16 Cal.3d 263 , 275-276 [127 Cal.Rptr. 629, 545 P.2d 1333], cert. den., 429 U.S. 929 [50 L.Ed.2d 299, 97 S.Ct. 335] with Payton v. New York (1980) 445 U.S. 573 [63 L.Ed.2d 639, 100 S.Ct. 1371] [protection from warrantless arrest in the home].)

In addition, the constitutional provision giving each California citizen a right of privacy has been held to be greater in scope than similar federal rights. (Compare City of Santa Barbara v. Adamson, supra,

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27 Cal.3d 123 , 129 with Village of Belle Terre v. Boraas (1974) 416 U.S. 1 [39 L.Ed.2d 797, 94 S.Ct. 1536] and Moore v. East Cleveland (1977) 431 U.S. 494 [52 L.Ed.2d 531, 97 S.Ct. 1932].)

Further, the California Legislature has often acknowledged the importance of privacy protections. For example, California has recognized **[29 Cal.3d 293]** that adults have a fundamental right to control decisions relating to their medical care. In this regard, the Legislature enacted the Natural Death Act (Health & Saf. Code, § 7185 et seq.), which concerns the right of an adult to decide whether to have life-sustaining procedures withheld or withdrawn in the event of a terminal illness. Also, section 1708.5 was added to the Health and Safety Code enabling physicians to lawfully prescribe laetrile or amygdalin to any terminal cancer patient who chooses that form of cancer therapy. (See People v. Privitera (1979) 23 Cal.3d 697 , 711 [153 Cal.Rptr. 431, 591 P.2d 919, 5 A.L.R. 4th 178] (dis. opn. of Bird, C. J.); id., at p. 740 (dis. opn. of Newman, J.).)

The Legislature has also acted to protect privacy in other areas of its citizens' lives. (See, e.g., Civ. Code, §§ 34.5-34.10 [right of a minor to obtain medical care without parental consent, for, inter alia, the prevention or treatment of pregnancy, and for rape, sexual assault, and drug or alcohol related problems]; Ed. Code, § 67140 et seq. [protecting the privacy of students' records]; Pen. Code, § 626.11 [protecting the right of privacy of persons renting rooms in student dormitories owned or operated by a state university, state college, or community college]; Civ. Code, § 1785.1 et seq. [the Consumer Credit Reporting Agencies Act]; id., § 1786 et seq. [the Investigative Consumer Reporting Agencies Act]; id., § 1798 et seq. [the Information Practices Act of 1977]; id., 1799 et seq. [prohibiting the unauthorized disclosure of business records]; Welf. & Inst. Code, § 5325.1 [protecting privacy rights of the mentally ill]; Note, California "Consenting Adults" Law: The Sex Act in Perspective (1976) 13 San Diego L.Rev. 439 [discussing the Legislature's repeal of former Penal Code restrictions on private sexual behavior between consenting adults].)

Thus, the right of privacy in California has never been dependent upon analogous federal decisions. fn. 7 This state's special concern for individual privacy is understandable when viewed from an historical perspective. The California Constitution has traditionally embodied innovations and concerns for individual liberties. (David, Our California Constitutions: Retrospections In This Bicentennial Year (1976) 3 Hastings Const. L.Q. 697.) fn. 8 This is a reflection of California's origins, for **[29 Cal.3d 294]** this state developed from a pioneer society comprised of a diverse group of people. (Id., at pp. 698-699.)

As the lead opinion ably demonstrates, California's protection of individual rights has been a bulwark against an erosion of our citizens' liberties. Predictably, California has advanced beyond the federal analysis when dealing with the selective withholding of governmental benefits based solely on the recipients' exercise of their rights. (See lead opn., ante, at pp. 257, 263-267.)

Recognition of the right of privacy in California is an historical fact underscored by our decisional law. California citizens' basic right of privacy has never been dependent upon federal recognition of a similar right. Therefore, this court is not obligated to limit our citizens' rights simply because the federal courts have decided to change direction. The independent obligation to interpret this state's Constitution (see lead opn., ante, at pp. 260-262) imposes upon this court the responsibility to be consistent in giving life to the principles which that document embodies. When the federal courts radically depart from Roe and its progeny, fn. 9 it is this court's duty to examine this state's constitutional requirements in order to decide if such a change is permissible.

As a result, the federal cases are of limited use in this context. Our state Constitution mandates a

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stricter standard than that used by the Supreme Court when examining funding restrictions which impair the right of privacy.

However, it is instructive to consider the reasoning of the Supreme Court when it dealt with this politically sensitive issue. That court held that legislative restrictions on **abortion** funding do not impair a citizen's right of private choice since they merely discourage the choice of **abortion** by granting a benefit (maternity care) to "encourage[] [an] **[29 Cal.3d 295]** alternative activity." (Harris v. McRae, supra, 448 U.S. at p. 315 [65 L.Ed.2d at p. 803, 100 S.Ct. at p. 2687].) This view allows the state to avoid the requirement of establishing a compelling state interest by engaging in the sophistry that there has been no barrier erected around a woman's right of choice.

Further, such a holding encourages the state to set up devious intrusions on its citizens' fundamental rights since it can do so with impunity. It is clear that the state may not directly prohibit its citizens' right to choose **abortion** as a method by which to deal with procreation. (People v. Belous, supra, 71 Cal.2d 954 .) That rule of constitutional law is circumvented when the state refuses to fund abortions for those dependent on the state for medical care. "[A]rticulating the purpose [of the challenged restrictions] as 'encouraging normal childbirth' does not camouflage the simple fact that the purpose, more starkly expressed, is discouraging **abortion**." (**Abortion** Funding Cases, supra, 66 Geo. L.J. at p. 1196.)

Additionally, the distinction between prohibitions and benefits arbitrarily separates the existence of a right from the realization and enjoyment of that right. (Beal v. Doe (1977) 432 U.S. 438, 462-463 [53 L.Ed.2d 464, 482-483, 97 S.Ct. 2366] (dis. opn. of Blackmun, J.); see, Tribe, supra, § 15-10, p. 933, fn. 77.)

In California, traditional constitutional interpretation does not permit such spurious distinctions. fn. 10 For example, in Salas v. Cortez, supra, 24 Cal.3d 22 , this court held that due process entitles an indigent defendant to appointed counsel in a state-prosecuted civil suit to determine paternity. The indigent defendant was not prohibited from appearing in propria persona or from attempting to secure the funds to retain counsel or the services of pro bono counsel. Nevertheless, this court held that the significant infringement of both due process rights to a fair trial and a person's fundamental interest in a correct adjudication of the parental relationship could not be upheld absent a compelling state interest. (Id., at p. 32.)

Another important case along these lines is Robins v. Pruneyard Shopping Center (1979) 23 Cal.3d 899 [153 Cal.Rptr. 854, 592 P.2d **[29 Cal.3d 296]** 341], affirmed, 447 U.S. 74 [64 L.Ed.2d 741, 100 S.Ct. 2035]. There, this court held that individuals must be permitted to exercise their First Amendment rights at a private shopping center notwithstanding the fact that the petitioners admittedly were not prohibited from exercising their free speech rights in other places. (See also, In re Hoffman (1967) 67 Cal.2d 845 , 852, fn. 7 [64 Cal.Rptr. 97, 434 P.2d 353] [invalidating restrictions on First Amendment activities in railroad station].)

Similarly, Danskin v. San Diego Unified Sch. Dist., supra, 28 Cal.2d 536 stands for the proposition that the state may not grant benefits in a manner which discriminates against the exercise of fundamental rights. In that case, this court held unconstitutional a public school's refusal to permit use of its auditorium by "subversive" groups. The court stated, "It is true that the state need not open the doors of a school building as a forum and may at any time choose to close them. Once it opens the doors, however, it cannot demand tickets of admission in the form of convictions and affiliations that it deems acceptable." (Id., at p. 547.) Since the state could not directly compel renunciation of beliefs,

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it could not make such renunciation a condition of receiving a public benefit. (Id., at p. 546.) Also, in Fort v. Civil Service Commission (1964) 61 Cal.2d 331 [38 Cal.Rptr. 625, 392 P.2d 385], Kinnear v. City etc. of San Francisco (1964) 61 Cal.2d 341 [38 Cal.Rptr. 631, 392 P.2d 391], and Bagley v. Washington Township Hospital Dist., supra, 65 Cal.2d 499 , this court invalidated restrictions on public employment which forced employees to choose between public employment and their First Amendment rights.

These cases graphically illustrate the principle that a compelling interest must be found to justify direct or indirect burdens on the exercise of fundamental rights. Thus, the question here is simply whether the Budget Act restrictions at issue actually impair or burden a poor woman's right to procreative choice. It is clear that they do.

The Budget Act limitations are all the more troublesome because they result in increased health hazards to the indigent woman. (Harris v. McRae, supra, 448 U.S. at pp. 353-356 [65 L. Ed.2d at pp. 827-829, 100 S.Ct. at pp. 2741-2715] (dis. opn. of Stevens, J.).) By disallowing the funding for most abortions, the state leaves the pregnant woman to carry an unwanted pregnancy to term or encourages her to abort without medical assistance. Thus, the funding restrictions inject a coercive financial incentive that forces the individual to accept the state's choice **[29 Cal.3d 297]** of either contraception or childbirth. It forces the indigent woman to exercise her choice in the fashion advocated by the state.

The Budget Act restrictions impermissibly limit the constitutionally protected choice of our female citizens. The state's attempt to justify these limitations as noncoercive is illusory. "When we take our seats on the bench we are not struck with blindness, and forbidden to know as judges what we see as men [and women] ...." (Ho Ah Kow v. Nunan (D.Cal. 1879) 12 F.Cas. 252, 255 (No. 6546).) As judges and as citizens, we cannot fail to see that if the state is allowed to restrict the exercise of choice for the poor alone in this intimate area, indigent women in our society are forced to become second class citizens. fn. 11

RICHARDSON, J.

I respectfully dissent. The consequences of the majority's extended legal analysis may be reduced to a simple proposition: The State of California and its taxpayers are constitutionally compelled to pay for the abortions of all Medi-Cal recipients who desire them. The highest court in the land has twice held directly to the contrary. No matter. Accepting as valid the very arguments which failed to persuade the Legislature, and disregarding all deference to a coequal branch of government, the majority reaches its conclusion relying on the now familiar "independent state grounds" and on the right of "privacy" embodied in the California Constitution in 1972. As I develop below, in my view this is very dubious reasoning. Before today I had thought that it was very well settled that it was the Legislature, not the courts, which had the ultimate authority to select those benefits and services to be included in a public welfare program.

The majority's thesis is that the Legislature's decision to give public monetary assistance to welfare mothers for their childbirth expenses thereby violates the constitutional rights of mothers who prefer to abort their child. By funding the childbirth of some women, it is contended that the state "forces" other indigent women to forego their constitutional right to abort. I suggest that such distorted logic defies constitutional analysis and makes no sense. The Legislature's decision to pay for the expenses of childbirth may make birth a more financially attractive alternative than an **abortion**, but such a decision no more **[29 Cal.3d 298]** "forces" women to give up **abortion** than funding the purchase of false teeth forces one to give up toothbrushes.

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The majority indulges in semantic legerdemain, phrasing the issue in terms of the "right to procreative choice," thus broadening the question to permit its argument. It is essential that we remain very clear on what this case is not about. The issue is not whether a woman's constitutional right to abort may be exercised without undue governmental interference (Roe v. Wade (1973) 410 U.S. 113 [35 L.Ed.2d 147, 93 S.Ct. 705]) or whether women have a right to an **abortion**. They do. The essential question before us is whether they have a right to abort free of charge and at taxpayer expense. As I will develop, these two questions involve vastly different considerations.

The majority relies primarily upon a line of cases which is wholly inapposite to the issue before us. (See Parrish v. Civil Service Commission (1967) 66 Cal.2d 260 [57 Cal.Rptr. 623, 425 P.2d 223]; Bagley v. Washington Township Hospital Dist. (1966) 65 Cal.2d 499 [55 Cal.Rptr. 401, 421 P.2d 409]; Danskin v. San Diego Unified Sch. Dist. (1946) 28 Cal.2d 536 [171 P.2d 885].) It is not surprising that, using a 13-inch ruler as a constitutional measure for the challenged legislation, the majority reaches such an erroneous result.

Thus, in Danskin the state improperly required loyalty oaths from those persons who sought permission to use school buildings for their meetings. We held that although the state had no duty to make school buildings available for public meetings, nevertheless, if it elected to do so, it could neither arbitrarily select among permitted users nor impose unconstitutional conditions upon that use. (28 Cal.2d at pp. 545-546.) Application of this Danskin principle to the case before us would result in prohibiting the state from the arbitrary extension of either childbirth or **abortion** benefits to some but not all recipients or, alternatively, the conditioning of the receipt of such benefits upon the waiver of some constitutional right. Nothing remotely resembling such selective or coercive conduct is involved in the case before us. Contrary to the majority's claim of "discriminatory governmental treatment" (ante, p. 256), childbirth benefits are available to everyone on a nondiscriminatory basis. Such benefits are not conditioned upon the waiver of the right to abort, for that decision remains the untrammelled and voluntary choice of each aid recipient. Similarly, the limited **abortion** benefits which are offered by Medi-Cal are available to everyone meeting the **[29 Cal.3d 299]** objective criteria prescribed in the legislation. (See id., at p. 259, fn. 1.) The majority makes no attempt to demonstrate the arbitrariness of any of these criteria. How then can Danskin support the majority's holding herein?

Bagley is wholly inapposite. In that case, a hospital district attempted to discharge an employee because of her political activities involving district board elections. In Bagley, we established strict standards for measuring the propriety of governmental restrictions upon the exercise of constitutional rights as a condition to public employment. (65 Cal.2d at pp. 505-507.) The Bagley rationale is not relevant to our consideration of the present case. Its "three-part test" so readily borrowed by the majority is plainly ill-suited for the analytical task before us. As previously noted, the legislative action in the present case imposes no conditions whatever upon the right of particular recipients of available benefits. In contrast, the Bagley employee was told to forego her political rights if she wished to remain employed. No similar demands or conditions are imposed upon the beneficiaries which the Legislature has selected for inclusion in the Medi-Cal program. In short, the Bagley tripartite test measures the validity of conditions imposed upon the receipt of public benefits. The test is wholly inappropriate to measure the constitutional adequacy of the benefits so provided, which is the only issue before us in this case.

The third principal case, Parrish, is no closer on point than either Bagley or Danskin. The Parrish welfare recipients were required to consent to predawn eligibility searches as a condition to the receipt

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of public aid. We there applied the Bagley standards and concluded that this conditional intrusion on constitutional rights was unjustified and improper. In contrast, the present case presents no such similar conditions upon the right to receive the kinds of aid which were funded by the Legislature. With due respect, I must suggest that the majority's attempt to find refuge in such weak precedents graphically illustrates the poverty of its argument.

The cases on which the majority relies involve the imposition of unconstitutional conditions upon the receipt of public benefits. This is entirely different from the problem herein presented. Yet, relevant precedent is not lacking. It simply will not support the result which the majority obviously struggles to achieve. **[29 Cal.3d 300]**

Two very recent decisions of the United States Supreme Court are directly in point. The high court decided identical issues in Harris v. McRae (1980) 448 U.S. 297 [65 L.Ed.2d 784, 100 S.Ct. 2671], and Maher v. Roe (1977) 432 U.S. 464, 471-474 [53 L.Ed.2d 484, 492-495, 97 S.Ct. 2376], with results diametrically opposite to those achieved by the majority here. In each case the Supreme Court sustained budgetary restrictions upon aid for abortions. The Maher court upheld a Connecticut welfare regulation which, as here, provided benefits for medical services incident to childbirth but denied those which related to nontherapeutic abortions. In Harris, the Supreme Court upheld the federal "Medicaid" Act and the so-called "Hyde Amendment" thereto which in combined effect denied public funding for some medically necessary abortions. In both cases the high tribunal rejected several constitutional arguments raised against these funding restrictions which are identical to those adopted by the majority, including challenges based on privacy, due process and equal protection principles. The majority herein chooses to ignore the rationale of the highest court in the land which deals specifically with the precise issues presented to us.

The primary issue in Maher was whether restrictions upon state aid for nontherapeutic abortions impermissibly infringed upon the rights of privacy or "freedom of choice" which the Supreme Court described in Roe v. Wade, supra, 410 U.S. 113. The Maher court observed that although its Roe holding "protects the woman from unduly burdensome interference with her freedom to decide whether to terminate her pregnancy" (432 U.S., at pp. 473-474 [53 L.Ed.2d at p. 494]) such a decision does not prevent the state from making "a value judgment favoring childbirth over **abortion**, and ... implement[ing] that judgment by the allocation of public funds." (Id., at p. 474 [53 L.Ed.2d at p. 494].) In its further amplification in Maher the United States Supreme Court spoke directly, and with compelling authority, to the precise point which is before us, explaining: "The Connecticut regulation before us is different in kind from the laws invalidated in our previous abortions decisions. The Connecticut [one may substitute California] regulation places no obstacles -- absolute or otherwise -- in the pregnant woman's path to an **abortion**. An indigent woman who desires an **abortion** suffers no disadvantage as a consequence of Connecticut's decision to fund childbirth; she continues as before to be dependent on private sources for the service she desires. The State may have made childbirth a more attractive alternative, thereby influencing the woman's decision, but it has imposed no restriction on access to abortions **[29 Cal.3d 301]** that was not already there. The indigency that may make it difficult -- and in some cases, perhaps, impossible -- for some women to have abortions is neither created nor in any way affected by the Connecticut regulation." (Id., at p. 474 [53 L.Ed.2d at pp. 494-495], italics added.) This reasoning, in my view, is directly applicable to the present case. It is also unanswerable. The California Legislature may constitutionally make "a value judgment favoring childbirth over **abortion** and ... implement that judgment by the allocation of public funds." (Ibid.) Such a choice may be sociologically unwise but it is not constitutionally illegal.

Last year in Harris the high tribunal again focused its attention on the precise issue before us, and

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flatly rejected the constitutional analysis advanced by the majority that "a woman's freedom of choice carries with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. The reason why was explained in Maher: although government may not place obstacles in the path of a woman's exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in the latter category. The financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary **abortion** as she would have had if Congress has chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in Wade." (448 U.S. at pp. 316-317 [65 L.Ed.2d at p. 804, 100 S.Ct. at p. 2688], fn. omitted.)

In similar fashion, the Supreme Court disposed of the due process argument, holding that there is no Fifth Amendment affirmative entitlement to government funds necessary to "realize all the advantages of that freedom" recognized by Roe v. Wade (pp. 317-318 [65 L.Ed.2d at p. 805, 100 S.Ct. at pp. 2688-2689]).

Finally, Harris rejected the reasoning of the majority that the funding restrictions violated equal protection principles by providing medically necessary services other than abortions. (Pp. 321-327 [65 L. **[29 Cal.3d 302]** Ed.2d at pp. 807-811, 100 S.Ct. at pp. 2690-2693].) The high court noted that although the impact of the federal law falls upon the indigent, prior decisions had repeatedly held that poverty, standing alone, is not a suspect classification which would invoke the strict scrutiny form of analysis. (448 U.S. at pp. 322-323 [65 L.Ed.2d at pp. 808-809, 100 S.Ct. at p. 2691].)

Applying this traditional rational basis test to determine whether the federal restrictions bore such a "relationship to its legitimate interest in protecting the potential life of the fetus" (p. 324 [65 L.Ed.2d at p. 809, 100 S.Ct. at pp. 2691-2692]), the Supreme Court found such a rational basis in the state's interest in protecting the potentiality of human life. The high tribunal observed: "By subsidizing the medical expenses of indigent women who carry their pregnancies to term while not subsidizing the comparable expenses of women who undergo abortions (except those whose lives are threatened), Congress has established incentives that make childbirth a more attractive alternative than **abortion** for persons eligible for Medicaid. These incentives bear a direct relationship to the legitimate congressional interest in protecting potential life. Nor is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions. **Abortion** is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life. [¶] Where, as here, the Congress has neither invaded a substantive constitutional right or freedom, nor enacted legislation that purposefully operates to the detriment of a suspect class, the only requirement of equal protection is that congressional action be rationally related to a legitimate governmental interest. The Hyde Amendment satisfies that standard." (Pp. 325-326 [65 L.Ed.2d at p. 810, 100 S.Ct. at pp. 2692-2693], fns. omitted.)

The majority questions the propriety of the California Legislature's interest in promoting childbirth and protecting potential life in the course of applying its inapposite Bagley "three-pronged test." Contrary to the high court analysis in Maher and Harris, the majority bases its holding on the faulty premise that California must somehow demonstrate not only that its foregoing interests might be fostered by the funding restriction but that they inevitably must be so fostered, and in addition, in a manner "least

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offensive" to the aid recipient's "right of procreative choice." (E.g., pp. 281, 282.) The majority's test is not only unduly strict in its evaluation of California's legitimate interests, but the majority's reasoning is wholly circular, entirely begging the question **[29 Cal.3d 303]** whether, indeed, there exists a right to choose between childbirth and a free **abortion** performed at state expense.

The California Legislature could reasonably believe that if free abortions "on demand" were unavailable, some women would elect to bear their children which would thereby promote the legitimate goals of encouraging childbirth and protecting fetal life. We cannot assume that the California Legislature is less protective of potential life than is the United States Congress. The Legislature also could assume that other women, no longer able to obtain abortions paid for by the taxpayers, might be encouraged before conception to discover and practice more effective birth control methods, thereby reducing to a considerable degree public welfare expenditures.

Thus, while the majority compares the cost of abortions with the cost of child bearing (ante, p. 277), it disregards a third "procreative choice" available to the indigent woman who prefers not to bear a child: use of effective contraception. Numerous birth control methods and techniques of varying degrees of effectiveness are available as alternatives to either pregnancy or **abortion**. Recognizing of course that no present method is infallible, I suggest that the majority errs in its assumption that "when the state finances the costs of childbirth, but will not finance the termination of pregnancy, it realistically forces the indigent woman to choose childbirth ...." (Ante, p. 285.) Instead, the Legislature may well have wished to encourage a "procreative choice" at an earlier stage by promoting the use of voluntary birth control.

The principal flaw, however, which runs throughout the entirety of the majority's theory is the erroneous assumption that if a woman has a constitutional right of "freedom of choice" in the matter of whether or not to bear her child it necessarily follows that the State of California and its taxpayers must pay for the costs of the exercise of that right. Fortunately, that sweeping generalization is not so, and never has been so in our constitutional history. A citizen clearly has a constitutional right to travel where and when he pleases. I have never heard it suggested that he is constitutionally entitled to a free trip to the Bahamas paid for from the public treasury. Every citizen has a constitutional right to vote, but he has no constitutional right to a free taxi ride to the polling place. Every citizen may run for public office, but I know of no case holding that he has a constitutional right to public funds to help him get elected. He has a constitutional right to express his views on **[29 Cal.3d 304]** public affairs, but he has no constitutional right to a free mailing of his views, or a free hall paid for by the taxpayers within which he may expound them. Even when, by a divided court, we recently recognized a right of representation for incarcerated indigent civil defendants we very carefully abstained from recognizing that such a right constituted any enforceable claim against the public treasury for the payment of such representation. (Payne v. Superior Court (1976) 17 Cal.3d 908 , 920, fn. 6 [132 Cal.Rptr. 405, 553 P.2d 565].) In short, the recognition of constitutional rights does not carry with it any corollary constitutional obligation on the state Legislature to furnish, out of public funds, the full and unrestricted implementation of those rights. This fact is unaffected by the majority's effort to cast the issue in the form of a "protection of either procreative choice." (Ante, p. 256.)

Finally, I think it very doubtful that when the people of California in 1972 approved the Legislature's proposed constitutional amendment adding the "right of privacy" to the list of inalienable rights, they thought they were committing themselves to the payment of free abortions. There is nothing whatever in the history of the initiative to suggest such a bizarre result. Rather, when they added the "right of privacy" to their "inalienable rights" the people were told that the right of privacy "prevents government and business interests from collecting and stockpiling necessary information gathered for

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one purpose in order to serve other purposes or to embarrass us.

Fundamental to our privacy is the ability to control circulation of personal information .... The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist and we are certainly unable to determine who has access to them.

"Even more dangerous is the loss of control over the accuracy of government and business records on individuals.

"The average citizen also does not have control over what information is collected about him. Much is secretly collected. We are required to report some information, regardless of our wishes for privacy or our belief that there is no public need for the information. Each time we apply for a credit card, or a life insurance policy, file a tax return, **[29 Cal.3d 305]** interview for a job, or get a drivers license, a dossier is opened and an informational profile is sketched. Modern technology is capable of monitoring, centralizing and computerizing this information which eliminates any possibility of individual privacy." (Ballot Pamp., Proposed Amends. to Cal. Const. with arguments to voters, Gen. Elec. (Nov. 7, 1972) p. 27.)

The foregoing extracts from the ballot arguments persuade me that when the people in 1972 adopted the constitutional "privacy" measure they thought they were approving restrictions on the dissemination of record information affecting and intruding upon their personal lives. This is the whole spirit of the ballot argument. It may have had wider constitutional implications, but there is nothing in the history of the amendment to suggest that the people intended to create a constitutionally protected right that was broader than the federal right of privacy declared in Roe v. Wade, supra. Certainly, the people did not intend to extend "privacy" to encompass a constitutional access to the public treasury for all indigents who want free abortions. Such a speculative jump in reasoning is of Olympian proportions -- from a restriction on information distribution to a constitutional obligation to pay for abortions. With due deference, I suggest that such a consequence is the pure invention of the majority and not constitutionally ordained by any California "right of privacy."

It is the exclusive legislative prerogative, and not ours, to determine how public monies shall be appropriated, and for what purposes. The United States Supreme Court in disposing of the identical arguments adopted by the majority herein has explicitly held "[n]or is it irrational that Congress has authorized federal reimbursement for medically necessary services generally, but not for certain medically necessary abortions." (448 U.S. at p. 325 [65 L.Ed.2d at p. 810, 100 S.Ct. at p. 2692].) The same constitutional considerations which moved the high court to defer to congressional judgment should similarly prompt us to accept the judgment of the California Legislature in its adoption of the Budget Act. The California Constitution prohibits us from rewriting the Budget Act, which budget, it bears repeating, is the Governor's responsibility to propose and the Legislature's to adopt. We seriously err when we continue, on misguided constitutional grounds, to usurp the lawmaking function of the California Legislature. **[29 Cal.3d 306]**

I would affirm the judgment in S.F. 24069, and deny the peremptory writs sought in S.F. 24053 and S.F. 24192.

Clark, J., concurred.

FN 1. The 1979 and 1980 Budget Acts restrict Medi-Cal **abortion** funding by specifying that none of

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the funds appropriated for Medi-Cal shall be used to pay for abortions, except under any of the following circumstances:

"(a) Where the life of the mother would be endangered if the fetus were carried to full term.

"(b) Where the pregnancy is ectopic.

"(c) Where the pregnancy results from an act punishable under Section 261 of the Penal Code, and such act has been reported, within 60 days, to a law enforcement agency or a public health agency which has immediately reported it to a law enforcement agency, and the **abortion** occurs during the first trimester.

"(d) Where the pregnancy results from an act punishable under Section 261.5 of the Penal Code, and the female is under 18 years of age, and the **abortion** is performed no later than the first trimester, provided the female's parent or guardian or, if none, an adult of the female's choice is notified at least five days prior to the **abortion** by the physician who performs the **abortion**. Regulations governing the notice requirement shall be promulgated by the State Director of Health Services.

"(e) Where the pregnancy results from an act punishable under Section 285 of the Penal Code, and such act has been reported to a law enforcement agency or a public health agency which has immediately reported it to a law enforcement agency and the **abortion** occurs no later than during the second trimester.

"(f) Where it is determined by prenatal studies limited to amniocentesis, fetal blood sampling, fetal antiography, ultrasound, X-ray, or maternal blood examination that the mother is likely to give birth to a child with a major or severe genetic or congenital abnormality due to the presence of chromosomal abnormalities, neural tube defects, biochemical diseases, hemoglobinopathies, sex-linked diseases, and infectious processes.

"(g) Where severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term, when so certified under penalty of perjury by two physicians, one of whom, where practicable, is a specialist in the affected medical discipline, and documentation thereof is provided with the claim for payment."

The primary difference between the 1978 act and the later acts is that the 1978 act provided funding for abortions to avoid severe and long-lasting physical health damage only when that damage arose from 10 enumerated medical conditions. Since the Legislature deleted that language in the 1979 and 1980 enactments, the question of the validity of the 1978 language is moot.

FN 2. Because both the trial court and Court of Appeal issued temporary stay orders, the restrictive provisions of the 1978 act were never implemented.

FN 3. Since the 1978 and 1979 Budget Acts have expired, the two suits seeking to restrain enforcement of these laws are technically moot. The action involving the 1980 law presently in effect is sufficient to present all issues which the parties seek to raise. The trial record and most of the briefs, however, were filed in connection with the 1978 and 1979 proceedings. Under these circumstances, we concluded that it would be appropriate to consolidate the three actions for purposes of both oral argument and opinion.

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FN 4. Following this reasoning, we have on numerous occasions construed the California Constitution as providing greater protection than that afforded by parallel provisions of the United States Constitution. A partial listing of such holdings includes: People v. Pettingill (1978) 21 Cal.3d 231 [145 Cal.Rptr. 861, 578 P.2d 108] (protection against self-incrimination); People v. Hannon (1977) 19 Cal.3d 588 [138 Cal.Rptr. 885, 564 P.2d 1203] (right to speedy trial); Serrano v. Priest (1976) 18 Cal.3d 728 [135 Cal.Rptr. 345, 557 P.2d 929] (equal protection); People v. Disbrow (1976) 16 Cal.3d 101 [127 Cal.Rptr. 360, 545 P.2d 272] (protection against self-incrimination); People v. Longwill (1975) 14 Cal.3d 943 [123 Cal.Rptr. 297, 538 P.2d 753] (search of arrestees); People v. Brisendine, supra, 13 Cal.3d 528 (same); Curry v. Superior Court (1970) 2 Cal.3d 707 [87 Cal.Rptr. 361, 470 P.2d 345] (double jeopardy); Cardenas v. Superior Court (1961) 56 Cal.2d 273 [14 Cal.Rptr. 657, 363 P.2d 889, 100 A.L.R.2d 371] (same); People v. Martin (1955) 45 Cal.2d 755 [290 P.2d 855] (vicarious exclusionary rule).

FN 5. In 1972, the people adopted article I, section 24, of the California Constitution which provides that the rights "guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." This declaration of constitutional independence, as we stressed in People v. Brisendine, supra, 13 Cal.3d 528 , 551, "did not originate at [the] election; indeed the voters were told the provision was a mere reaffirmation of existing law."

FN 6. Article I, section 1 (as reworded by constitutional amendment in 1974) presently provides: "All people are by nature free and independent and have certain inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining safety, happiness and privacy."

FN 7. See e.g., Danskin, supra, 28 Cal.2d 536 ; American Civil Liberties Union v. Board of Education (1961) 55 Cal.2d 167 [10 Cal.Rptr. 647, 359 P.2d 45, 94 A.L.R.2d 1259]; Wirta v. Alameda-Contra Costa Transit Dist. (1967) 68 Cal.2d 51 [64 Cal.Rptr. 430, 434 P.2d 982].

FN 8. See, e.g., Fort v. Civil Service Commission (1964) 61 Cal.2d 331 [38 Cal.Rptr. 625, 392 P.2d 385]; Kinnear v. City etc. of San Francisco (1964) 61 Cal.2d 341 [38 Cal.Rptr. 631, 392 P.2d 391]; Bagley v. Washington Township Hospital Dist. (1966) 65 Cal.2d 499 [55 Cal.Rptr. 401, 421 P.2d 409]; Rosenfield v. Malcolm (1967) 65 Cal.2d 559 , 561 [55 Cal.Rptr. 505, 421 P.2d 697]; Vogel v. County of Los Angeles (1967) 68 Cal.2d 18 [64 Cal.Rptr. 409, 434 P.2d 961]; City of Carmel-by-the-Sea v. Young (1970) 2 Cal.3d 259 [85 Cal.Rptr. 1, 466 P.2d 225, 37 A.L.R.3d 1313]; Finot v. Pasadena City Bd. of Education (1967) 250 Cal.App.2d 189 [58 Cal.Rptr. 520].

FN 9. See, e.g., Parrish v. Civil Service Commission (1967) 66 Cal.2d 260 [57 Cal.Rptr. 623, 425 P.2d 223].

FN 10. See, e.g., Housing Authority v. Cordova (1955) 130 Cal.App.2d Supp. 883 [279 P.2d 215]; Atkisson v. Kern County Housing Authority (1976) 59 Cal.App.3d 89 [130 Cal.Rptr. 375].

FN 11. See, e.g., King v. Unemployment Ins. Appeals Bd. (1972) 25 Cal.App.3d 199 [101 Cal.Rptr. 660]; Thornton v. Department of Human Resources Dev. (1973) 32 Cal.App.3d 180 [107 Cal.Rptr. 892].

FN 12. See, e.g., Binet-Montessori, Inc. v. San Francisco Unified School Dist. (1979) 98 Cal.App.3d 991 [160 Cal.Rptr. 38].

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FN 13. See, e.g., Danskin, supra, 28 Cal.2d 536 ; Vogel, supra, 68 Cal.2d 18 .

FN 14. See, e.g., Parrish, supra, 66 Cal.2d 260 ; City of Carmel-By-the-Sea, supra, 2 Cal.3d 259 ; Finot, supra, 250 Cal.App.2d 189 ; King, supra, 25 Cal.App.3d 199 ; Thornton, supra, 32 Cal.App.3d 180 .

FN 15. We have not, of course, held that the government may never condition the receipt of benefits or privileges upon the nonassertion of constitutional rights. Rather, as we explained in Bagley v. Washington Township Hospital Dist., supra, 65 Cal.2d 499 , 505: "Just as we have rejected the fallacious argument that the power of government to impose such conditions knows no limit, so must we acknowledge that government may, when circumstances inexorably so require, impose conditions upon the enjoyment of publicly conferred benefits despite a resulting qualification of constitutional rights."

FN 16. See, e.g., O'Neil, Unconstitutional Conditions: Welfare Benefits With Strings Attached (1966) 54 Cal.L.Rev. 443; Linde, Constitutional Rights in the Public Sector (1965) 40 Wash.L.Rev. 10; Note, Unconstitutional Conditions (1960) 73 Harv.L.Rev. 1595; Willcox, Invasions of the First Amendment Through Conditioned Public Spending (1955) 41 Cornell L.Q. 12; Hale, Unconstitutional Conditions and Constitutional Rights (1935) 35 Colum.L.Rev. 321; Powell, The Right to Work for the State (1916) 16 Colum.L.Rev. 99.

FN 17. Indeed, recent academic commentaries on the McRae decision have criticized the majority's conclusion on the ground that the ruling is incompatible with the prior federal unconstitutional condition precedents. (See, e.g., Note, The Supreme Court, 1979 Term (1980) 94 Harv.L.Rev. 75, 96-107. See also Perry, Why the Supreme Court Was Plainly Wrong in the Hyde Amendment Case: A Brief Comment on Harris v. McRae (1980) 32 Stan.L.Rev. 1113.)

FN 18. Although the McRae majority upheld restrictions which denied poor women federal Medicaid funds for **abortion**, the majority opinion notes that "[a] substantial constitutional question would arise if Congress had attempted to withhold all Medicaid benefits from an otherwise eligible candidate simply because that candidate had exercised her constitutionally protected freedom to terminate her pregnancy by **abortion**." (448 U.S. at p. 317, fn. 19 [65 L.Ed.2d at p. 805, 100 S.Ct. at p. 2688].)

FN 19. The state cannot rebut this conclusion by attempting to portray the program as one that does not provide general medical care but rather reimburses only specified medical expenses, such as those for childbirth, while withholding funds for other medical expenses, such as those for **abortion**. In the first place, the breadth of the Medi-Cal program belies any suggestion that the state in this case is affording only the specialized benefit of medical expense for childbirth. As we have noted, under Medi-Cal the state pays for virtually all necessary medical expenses of the poor, and does not confine its funding only to childbirth expenses.

Moreover, it is obvious that the state cannot circumvent the principles of the Danskin-Bagley doctrine by defining the benefit offered in a constitutionally discriminatory fashion. Thus, for example, the result in Danskin clearly would not have differed if the state had announced that it was making public schools available solely for patriotic meetings. (Cf. Wirta v. Alameda-Contra Costa Transit Dist., supra, 68 Cal.2d 51 .) Similarly, the Bagley analysis could not be avoided by a hospital district's declaration that it has an opening for the position of "apolitical nurse's aide." Contrary to the dissent's reasoning (see p. 298, post), the foregoing examples are not rendered constitutionally palatable simply

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because "everyone" would be free to make patriotic speeches or because "everyone" would be permitted to apply for the apolitical nurse's aide job.

FN 20. Section 14000 provides in full: "The purpose of this chapter is to afford health care and related remedial or preventive services to recipients of public assistance and to medically indigent aged and other persons, including related social services which are necessary for those receiving health care under this chapter.

"The intent of the Legislature is to provide, to the extent practicable, through the provisions of this chapter, for health care for those aged and other persons, including family persons who lack sufficient annual income to meet the costs of health care, and whose other assets are so limited that their application toward the costs of such care would jeopardize the person or family's future minimum self-maintenance and security. It is intended that whenever possible and feasible:

"(a) The means employed shall be such as to allow, to the extent practicable, eligible persons to secure health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability.

"(b) The benefits available under this chapter shall not duplicate those provided under other federal or state laws or under other contractual or legal entitlements of the person or persons receiving them.

"(c) In the administration of this chapter and in establishing the means to be used, the department shall give due consideration both to the appropriate organization and to the ready accessibility and availability of the facilities and resources for health care to persons eligible under this chapter, and to new and innovative approaches to the delivery of health care services."

FN 21. The trial court in McRae (McRae v. Califano (E.D.N.Y. 1980) 491 F.Supp. 630) conducted a lengthy factual hearing with extensive medical evidence and concluded that the federal funding restrictions, which are comparable to those under the California Budget Act, hazard the woman's life and health in a variety of ways. The comparable California Budget Act restrictions, we conclude, pose the same hazards to the health of indigent California women. Specifically:

(1) The act permits funding of abortions "[w]here the life of the mother would be endangered if the fetus were carried to full term." (Stats. 1979, ch. 259, item 261.5(a), p. 87.) The phrase "would be endangered," however, is vague -- so vague that we held similar language unconstitutional in People v. Belous, supra, 71 Cal.2d 954 . If interpreted to require a substantial certainty or even a reasonable probability of death, it excludes funding in many cases in which the risk of death is sufficient to induce a physician to recommend **abortion**.

(2) The act also permits **abortion** "[w]here severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term." That language by necessary implication excludes cases in which the damage cannot be described as both severe and long lasting. It also excludes damage to mental health regardless of severity and duration.

(3) A denial of funding will induce some women to attempt **abortion** without medical assistance, a procedure which carries an extreme risk of injury or death. (See People v. Belous, supra, 71 Cal.2d at pp. 965-966.)

(4) A denial of funding will induce some women to delay **abortion** until they can somehow raise the

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money to pay for a private **abortion**, although abortions later in pregnancy present a greater risk to life and health.

(5) The denial of funding will induce some women to carry the child to term even though relevant medical considerations -- one of which may be the psychological impact of carrying an unwanted child -- make childbirth much more risky than **abortion**.

FN 22. Our analysis at this point closely parallels the strict judicial scrutiny used to determine whether an enactment which discriminates against the exercise of a fundamental right denies equal protection of the law. Because the state cannot demonstrate that the statutory scheme is supported by a compelling state interest, we believe that the statutes in question are additionally unconstitutional under established equal protection principles. In light of the similarity of the applicable principles in this context, however, we see no need to undertake a separate analysis of the statutes' equal protection defects.

FN 23. In Williams v. Zbaraz (1980) 448 U.S. 358 [65 L.Ed.2d 831, 100 S.Ct. 2694], a companion case to McRae, it was estimated that funding restrictions similar to those at issue here would impose upon the State of Illinois an additional cost "of about $20,000,000 per year." (See 448 U.S. at p. 355, fn. 9 [65 L.Ed.2d at p. 829, 100 S.Ct. at p. 2715] (dis. opn. by Stevens, J.).) Because the population of California is significantly greater than that of Illinois, the added costs would presumably be much higher.

FN 24. The dissenting opinion asserts that we overlook a third procreative choice available to the indigent woman -- avoiding pregnancy. For the woman who is already pregnant, of course, that choice is unavailable, whether her pregnancy resulted from intentional act, carelessness, ignorance of contraceptive methods, or contraceptive failure. Perhaps in an ideal world no woman who does not want a child would ever become pregnant, and nothing would ever happen after conception to change matters, but that utopian vision is no comfort to the persons whose constitutional freedom of choice is affected by the restrictions on **abortion** funding.

FN 25. In the Zbaraz case (see fn. 23, ante), the trial court found that the average cost to the State of Illinois of an **abortion** was less than $150, while the average cost of childbirth exceeded $1,350. (See 448 U.S. at p. 355, fn. 9 [65 L.Ed.2d at p. 829, 100 S.Ct. at p. 2715] (dis. opn. of Stevens, J.).)

FN 26. Ironically, the Supreme Court decision in McRae, filed in June 1980, supplies for the 1980 California Budget Act a conceivable economic justification that did not apply to the 1978 and 1979 acts. The 1980 Budget Act **abortion** funding restrictions, as we have noted, will substantially increase total government outlay, because childbirth is much more expensive than **abortion**. As a result of the McRae decision upholding the Hyde Amendment, however, some of those increased costs will shift from the state to the federal taxpayer; under McRae, federal funds are no longer available to subsidize state **abortion** payments, but remain available to subsidize state maternity and childbirth payments.

The state's interest in shifting expenditures to the federal fisc, however, can hardly be described as a significant one. In the first place, the California taxpayer is also a federal taxpayer, and derives no benefit when money is taken from one pocket instead of another. Second, taking into account not only the required state contribution to maternity and childbirth expenses under Medi-Cal but also the substantial expense of providing state support for unwanted minors, the Budget Act restrictions will ultimately cost the California taxpayer more than would **abortion** funding. The serious impairment of a fundamental right inflicted by the **abortion** funding limitations cannot be justified on so flimsy a

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basis.

The Attorney General also suggests that the Budget Act provisions reflect the state's desire to accommodate those taxpayers who are conscientiously opposed to **abortion**. The antagonism of taxpayers toward the exercise of a constitutional right, of course, in no way justifies state discrimination against persons who exercise that right. If the Attorney General is suggesting that the state could accommodate objecting taxpayers by allocating their taxes to other state purposes, the short answer is that the Budget Act enacts no such allocation; it bars funding of abortions from all revenue sources whatever, including taxpayers who favor funding of abortions and those who are indifferent on the matter.

FN 27. Indeed, the California Legislature has itself recognized the importance of avoiding such discrimination against the poor as one general purpose of the Medi-Cal program. Section 14000 of the Welfare and Institutions Code, in defining the purpose of the Medi-Cal program, emphasizes that "[i]t is intended that whenever possible and feasible ... [t]he means employed shall be such as to allow, to the extent practicable, eligible persons to secure health care in the same manner employed by the public generally, and without discrimination or segregation based purely on their economic disability." As we have seen, the elimination of funds for **abortion** is not related to preserving the feasibility or practicability of the Medi-Cal program.

FN 28. Again, this requirement parallels the requirement that the state, to sustain legislation subject to strict judicial scrutiny under the equal protection clause, must demonstrate "'not only that it has a compelling interest which justifies the law, but that the distinctions drawn by the law are necessary to further its purpose.'" (Original italics.) (Serrano v. Priest (1976) 18 Cal.3d 728 , 761 [135 Cal.Rptr. 345, 557 P.2d 929].)

FN 29. The Pregnancy Freedom of Choice Act (Welf. & Inst. Code, § 16145 et seq.) provides an excellent example of a program designed to aid indigent women who choose to bear children without impinging upon the rights of those who choose **abortion**. Section 16145 states the purpose of this act: "The Legislature finds that pregnancy among unmarried persons under 21 years of age constitutes an increasing social problem in the State of California. In order to have effective freedom of choice between an **abortion** and carrying pregnancy to term, the assistance of the state in addition to medical services is required. The problem can be alleviated effectively by a program of structured services, including counseling and residential treatment services, provided by licensed maternity homes." Subsequent sections provide for state reimbursement of expenses incurred by maternity homes in providing the specified services.

The act, by its title and declared purpose, signifies a legislative recognition that women are entitled to effective freedom of choice, and that effective freedom of choice may require state-assisted medical services. Because childbirth may involve care and counseling needs beyond those required for **abortion**, the act establishes a state program to provide those needs. It thus serves a state objective to eliminate financial considerations that make one choice more expensive than the other, thereby granting the woman effective freedom of choice; the Budget Act, by contrast, seeks to make **abortion** prohibitively expensive relative to childbirth and thereby to control the woman's choice.

FN 30. In Roe v. Wade, supra, the United States Supreme Court expressly took note of "the sensitive and emotional nature of the **abortion** controversy, of the vigorous opposing views, ... and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experience, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and

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family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about **abortion**." (410 U.S. at p. 116 [35 L.Ed.2d at p. 156].)

FN 31. The dissenting opinion incorrectly asserts that our opinion assumes that the state must fund the exercise of constitutional rights. To avoid any possible misunderstanding, we reiterate: the state need not fund abortions, childbirth, appendectomies, or any other medical procedure, but when it undertakes to fund medical treatment for indigents, it cannot withhold funds from some eligible persons because they exercise a constitutional right.

FN 32. As described in a familiar Tin Pan Alley lyric: "The rich get richer and the poor get ... children." (Excerpted from "Ain't We Got Fun" by Richard Whitney.)

FN 1. "Provided further, that if any of the provisions of this item or the application thereof to any person or circumstances is stayed, enjoined, otherwise delayed, or invalidated by court action, the Department of Finance shall authorize the State Controller to transfer from Item 287 to this item such sums determined by the Director of Finance which are necessary to provide for the costs of those abortions fundable as a result of such court action." (Stats. 1980, ch. 510, item 287.5.)

It is clear that the power of the judiciary to invalidate statutes found inconsistent with the Constitution is not limited to those cases in which there is no resulting fiscal burden on the state. (Moe v. Secretary of Administration & Finance (1981) ___ Mass. ___ [417 N.E.2d 387, 395]. See, e.g., Shapiro v. Thompson (1969) 394 U.S. 618 [22 L.Ed.2d 600, 89 S.Ct. 1322]; Gideon v. Wainwright (1963) 372 U.S. 335 [9 L.Ed.2d 799, 83 S.Ct. 792, 93 A.L.R.2d 733]; Salas v. Cortez (1979) 24 Cal.3d 22 [154 Cal.Rptr. 529, 593 P.2d 226]; Payne v. Superior Court (1976) 17 Cal.3d 908 [132 Cal.Rptr. 405, 553 P.2d 565]; Parrish v. Civil Service Commission (1967) 66 Cal.2d 260 [57 Cal.Rptr. 623, 425 P.2d 223].)

FN 2. The majority suggests that the test of Bagley v. Washington Township Hospital Dist. (1966) 65 Cal.2d 499 [55 Cal.Rptr. 401, 421 P.2d 409] must be used to evaluate governmental benefit programs that restrict the exercise of a fundamental right through the imposition of an indirect burden or a condition. Since I find no constitutional distinction between direct burdens and indirect burdens or conditions (see post at p. 290), I would apply the traditional strict scrutiny standard.

Bagley was one case in a line of California cases which held that conditions on the exercise of a fundamental right must be reviewed with the same close scrutiny as a direct burden on those rights. (Cf. Danskin v. San Diego Unified Sch. Dist., supra, 28 Cal.2d 536 .) At the time Bagley was written, the concept of close scrutiny had not been fully developed. Bagley represents an early attempt by this court to formulate a standard for this close scrutiny. As such, it contains many of the concepts that were later incorporated into the doctrine of strict scrutiny. However, Bagley was not the final word of this court on the subject. Its precise formulation of the standard to be used has been superseded by later developments. (See Purdy & Fitzpatrick v. State of California (1969) 71 Cal.2d 566 , 578-586 [79 Cal.Rptr. 77, 456 P.2d 645, 38 A.L.R.3d 1194]; People v. Belous, supra.)

Bagley has generated some confusion in the Courts of Appeal precisely because its language does not match the language of strict scrutiny found in the cases which followed it. In 1971, this court cited Bagley as authority for the proposition that the state could not impair the exercise of a fundamental right without demonstrating a compelling interest. (Bogacki v. Board of Supervisors (1971) 5 Cal.3d 771 , 778-779 [97 Cal.Rptr. 657, 489 P.2d 537].) Over the years, the three-pronged test of Bagley has

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not been followed. The only part of the test which has been consistently applied deals with the infringement by the state of a fundamental right and the requirement of greater scrutiny by the courts. (Bekiaris v. Board of Education (1972) 6 Cal.3d 575 , 585-586 [100 Cal.Rptr. 16, 493 P.2d 480]; White v. Davis, supra, 13 Cal.3d 757 , 772; Merco Constr. Engineers, Inc. v. Los Angeles Unified Sch. Dist. (1969) 274 Cal.App.2d 154 , 169 [79 Cal.Rptr. 23]; Healdsburg Police Officers Assn. v. City of Healdsburg (1976) 57 Cal.App.3d 444 , 450 [129 Cal.Rptr. 216]. See also, Bogacki v. Board of Supervisors, supra, 5 Cal.3d 771 , 796-797, fn. 12 (dis. opn. of Tobriner, J.). But see Binet-Montessori, Inc. v. San Francisco Unified School Dist. (1979) 98 Cal.App.3d 991 [160 Cal.Rptr. 38].)

The conclusion in these cases that the Bagley standard is equivalent to a compelling state interest standard is understandable in light of its history. (Compare the language of the Belous test, post, at fn. 3.) Bagley has been applied exclusively to cases which involved restrictions on a fundamental right. When the language and result reached in Bagley are closely examined, it becomes clear that this court employed a de facto strict scrutiny test.

I disagree with any implication that in future cases an impairment of a right not currently deemed fundamental may be justifiable if the state can show a less than compelling interest. Since the facts of this case do not present this issue, I think it unwise to lay the groundwork for such a decision through dictum, particularly where the issue was neither presented nor briefed. Further, a balancing of degrees of burden and degrees of "fundamentalness" presents a task that the judiciary is no more capable of performing in the area of due process than it is in the area of equal protection. (See Hawkins v. Superior Court (1978) 22 Cal.3d 584 , 607-610 [150 Cal.Rptr. 435, 586 P.2d 916] (conc. opn. of Bird, C. J.).)

Bagley does not compel such a balancing of rights and interests. The implication in Bagley that restrictions on a less than fundamental right would call for a lesser standard of review is dictum and has been superseded by later developments in the doctrine of fundamental rights.

FN 3. The former criminal statutes prohibiting **abortion** provide an example of direct infringement in this area. Those statutes were declared unconstitutional. Their impact fell most heavily on women who could not afford costly illegal abortions locally or legal abortions in other countries. (See Callahan, **Abortion**: Law, Choice and Morality (1970) pp. 136-137; Rosen, Psychiatric Implications of **Abortion**: A Case Study in Social Hypocrisy, in **Abortion** and the Law (Smith edit. 1967) pp. 90-92; Charles & Alexander, Abortions for Poor and Nonwhite Women: A Denial of Equal Protection (1971) 23 Hastings L.J. 147, 150-156.) This case presents an indirect infringement the results of which are the same. Thus, it is a distinction without a difference to assert that because the governmental action is indirect rather than direct, the infringements which result are of less significance constitutionally.

FN 4. This court in Belous recognized "[t]he fundamental right of the woman to choose whether to bear children follows from the Supreme Court's and this court's repeated acknowledgment of a 'right of privacy' or 'liberty' in matters related to marriage, family, and sex. [Citations.] ... [¶] The critical issue is not whether such rights exist, but whether the state has a compelling interest in the regulation of a subject which is within the police powers of the state [citations], whether the regulation is 'necessary ... to the accomplishment of a permissible state policy' [citations], and whether legislation impinging on constitutionally protected areas is narrowly drawn and not of 'unlimited and indiscriminate sweep' [citations]." (71 Cal.2d at pp. 963-964.)

FN 5. Article I, section 1 now reads: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and

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protecting property, and pursuing and obtaining safety, happiness, and privacy." (Italics added.)

FN 6. This extension of court decisions obviously included the extant decisions of this court in the area of freedom of choice and a citizen's right to privacy in areas dealing with procreation. (See Ballard v. Anderson (1971) 4 Cal.3d 873 [95 Cal.Rptr. 1, 484 P.2d 1345, 42 A.L.R.3d 1392]; People v. Belous, supra, 71 Cal.2d 954 .)

FN 7. Our Constitution provides: "Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution." (Cal. Const., art. I, § 24.)

FN 8. Judge David notes, for example, the prohibitions against slavery and the grant of women's suffrage long before such tenets were nationally adopted. (Id., at pp. 713, 727-728.)

FN 9. The **abortion** funding cases of the United States Supreme Court have been criticized as inconsistent with Roe v. Wade, supra, and other federal cases. (Moe v. Secretary of Administration & Finance, supra, 417 N.Ed.2d at pp. 397-404; Harris v. McRae, supra, 448 U.S. at p. 329 [65 L.Ed.2d at p. 812, 100 S.Ct. at p. 2702] (dis. opn. of Brennan, J.); id. at p. 337 [65 L.Ed.2d at p. 817, 100 S.Ct. at p. 2706] (dis. opn. of Marshall, J.); **Abortion** Funding Cases, supra, 66 Geo. L.J. at pp. 1197-1201; Perry, Why the Supreme Court Was Plainly Wrong in the Hyde Amendment Case: A Brief Comment on Harris v. McRae (1980) 32 Stan. L.Rev. 1113; Tribe, American Constitutional Law (1978) § 15-10, pp. 933-934, fn. 77 [hereinafter cited as Tribe]; Note, The Supreme Court, 1979 Term (1980) 94 Harv. L.Rev. 1, 96, 99-102; Note, Committee to Defend Reproductive Rights v. Myers: Medi-Cal Funding of **Abortion** (1979) 9 Golden Gate L. Rev. 361, 384-387.)

FN 10. Some writers have noted that federal cases do not permit such a distinction either. (Harris v. McRae, supra, 448 U.S. at pp. 334-335 [65 L.Ed.2d at pp. 815-816, 100 S.Ct. at pp. 2704-2705] (dis. opn. of Brennan, J.); Note, The Supreme Court, 1979 Term, supra, 94 Harv. L.Rev. at pp. 96-107.)

FN 11. The lead opinion's thorough analysis of the state's interest correctly concludes that the justifications advanced by the state are not compelling. (See lead opn., ante, at pp. 273-274.)

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