



The Wagstaffe Group CA Practice Guide: Every CA Lawyer's Litigation GPS

Sales Team Tools – Sample Searches



TWG's California Practice Guide

Sales Team Tools – Sample Search w/ Success

Summary of Using TWG Searches for Hands-On Selling:

Telling prospective buyers about the multiple merits of our new ***The Wagstaffe Group California Practice Guide*** can easily be brought to life by demonstrating its attributes in live-time, hands-on selling exercises. Every single day, California litigators need to research practice questions, economically locate the answers for their clients and be certain the guidance provided is accurate and current.

Performing these tasks quickly and effectively is of paramount importance—hence, the great value of the ***TWG CA Practice Guide***.

To follow are a few simple examples of research questions that might confront a litigator in California and a straightforward word search query into the ***TWG CA Practice Guide*** to locate the answer along with the governing cases. Try it out in live time and you'll discover that would-be purchasers can see for themselves the deep value of this product. That our platform also contains tactical “Strategic Points,” explanatory Jim Wagstaffe-videos and “hot off the presses” court decisions and rules, if any, on the topic in our Current Awareness feature makes the case even more convincingly.

TWG's California Practice Guide

Sample Search w/ Success

- Every day, California litigators need to research practice questions, economically locate the answers for their clients and be certain the guidance provided is accurate and current
- Performing these tasks quickly and effectively is of paramount importance—hence, the great value of the **TWG CA Practice Guide**

#1 – Attorney Invoices & Privilege

Litigator Question: In fee disputes, public records requests and sometimes in general litigation, a document request or subpoena seeks an attorney's invoices. Are such invoices protected by the attorney-client privilege?

TWG CA Search Query: invoice /10 privilege

Answer: **Chapter 40-III[G][4][i].**

- **Yes.** If they reveal information provided for purposes of legal consultation in pending and active litigation (citing *Los Angeles Cty. Bd. of Supervisors v. Sup. Ct.* (2016) 2 Cal. 5th 282, 300).

#2 – Scope of Anti-SLAPP Motions to Strike

Litigator Question: In a special motion to strike a lawsuit under California's anti-SLAPP statute, if the argument is that the cause of action arose as part of an official proceeding, must the defendant also show the plaintiff's communications were matters of public (not private) interest?

TWG CA Search Query:

official proceeding category /10 public interest requirement

Answer: **Chapter 25-II[D][3][a].**

- **No.** If the claim arises from speech before an official proceeding, there is no separate requirement it also be speech on a matter of public interest. (citing *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal. 4th 1106, 1123).

#3 – ESI Person Most Knowledgeable (PMK) Deposition

Litigator Question: Can I take a deposition of the other side's PMK on ESI, and if so, what topic areas of inquiry should I pursue?

TWG CA Search Query: ESI /10 PMK notice

Answer: **Chapter 43-X[C][3]**.

- **Yes.** And you are advised to inquire at to:
 - Description of computer system
 - Description of email systems
 - Identification of relevant IT witnesses
 - Internet systems
 - Use of removable media
 - Data backups
 - Retention policies

#4 – Deposing Out-of-State Parties in CA

Litigator Question: If your opposing party is out-of-state, can you obtain a court order to have their deposition taken in the State of California?

TWG CA Search Query: travel limits /10 deposition

Answer: **Chapter 45-II[H][1][d]**.

- **Split.** There is authority for the court to order an out-of-state party to appear in California to give a deposition in this state. [But note there is conflicting authority.] (Compare *Glass v. Sup. Ct.* (1988) 204 Cal. App. 3d 1048, 1052—yes; *Toyota Motors v. Sup. Ct.* (2011) 197 Cal. App. 4th 1107, 1122--no).

#5 – “Safe Harbor” for Filing Sanction Motions

Litigator Question: When the “safe harbor” sanctions motion is first served on an opposing party (21-days before it is filed) must it include the actual hearing date in order to be valid?

TWG CA Search Query: sanctions /10 filing date

Answer: **Chapter 60-II[A][4][c]**

- **Yes.** Even though the 21-day “safe harbor” copy of an intended sanctions motion must (and can) only be served (and not yet filed unless the opponent does not withdraw or correct the challenged paper), it nevertheless must already contain a normal notice and hearing date in order to be valid. *Galleria Plus, Inc. v. Bank* (2009) 179 Cal. App. 4th 535, 537—saying motion will be filed on a date to be selected later invalid

#6 – Admissibility of Evidence on Summary Judgment

Litigator Question: In opposing a motion for summary judgment, must the party submit evidence in admissible form?

TWG CA Search Query: admissible at trial /10 437c

Answer: **Chapter 56-VI[B]**

- **Generally yes.** Generally yes. However, there is recent authority suggesting that if the evidence is shown to be “potentially admissible” at trial, like an otherwise hearsay deposition or grand jury testimony excerpt, the court can consider its admissibility on summary judgment. See *Sweetwater Union High Sch. Dist. v. Gilbane Bldg. Co.* (2019) 6 Cal. 5th 931, 94; see also *TWG Fed Current Awareness: Joseph v. Lincare, Inc.*, No. 20-1396, 2021 U.S. App. LEXIS 6052, * 16-18 (1st Cir. Mar. 2, 2021) (need not authenticate documents produced by other side)

#7 – Lawyers & Clients who want to end a case w/o further expense

Litigator Question: If you voluntarily dismiss an action, are you still liable to the other side for attorney fees awardable under a contract to the “prevailing” party?

TWG CA Search Query: voluntary dismissal w/10 contract and fees

Answer: **Chapter 58-IV[B]**

- **No.** Contractually authorized attorney fees are not recoverable following a voluntary dismissal of a contract action, because by law, there is no prevailing party for the purpose of a fee award. [CC§ 1717(b)(2); *Ford Motor Credit Co. v. Hunsberger* (2008) 163 Cal.App.4th 1526,1530]

#8 GPS: The Product Differentiator

Brand New “Answer” – CA Current Awareness

Litigator Question: Are there any new cases involving whether a nonsignatory to a contract (with an arbitration clause) nevertheless can be compelled to arbitrate a dispute?

TWG CA Search Query – CA Current Awareness: arbitration w/5 nonsignatory

Answer: **Current Awareness: Jan 25, 2022 and Jul 6, 2021**

Yes. (if nonsignatory “closely related” to a party to the arbitration contract, e.g. successors in interest, third party beneficiaries, and alter egos) While generally, of course, nonsignatories are not bound by contracts to which they are not parties (and certainly if given no notice such as in hidden text of a browsewrap or an online cryptocurrency exchange site), if they are “closely related” to a signing party such as a successor in interest, then the arbitration can be enforced. See *Garcia v. Expert Staffing West* (Dec. 29 2021) 2021 Cal.App LEXIS 1098, *10 (browsewrap case); *Pillar Project AG v. Payward Ventures, Inc.* (2021) 64 Cal.App.5th 671 (online exchange) case)– both citing to **TWG Cal. Prac. Guide, §5-III[H][2]—Generally Nonsignatories Cannot Compel Arbitration or Be Compelled to Arbitration**

Compete With Confidence