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5 Attorneys for Plaintiff(s),  
[CLIENT'S NAME(S)]

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF [COUNTY ], [DISTRICT]

10 [PLAINTIFF(S)], an individual,  
11 Plaintiff,  
12 vs.  
13 [DEFENDANT(S)], and DOES 1 to [#],  
14 inclusive,  
15 Defendants.

Case No. [ ]  
Honorable [ ]  
[Dept. [#]]

PLAINTIFF'S RESPONSE TO  
DEFENDANT'S NOTICE OF  
INDEPENDENT MEDICAL  
EXAMINATION

Date: [ ]  
Time: [ ]  
Location: [ ]

Action Filed: [ ]  
Trial Date: [ ]

19 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:  
20 PLEASE TAKE NOTICE that PLAINTIFF [CLIENT'S NAME(S)]  
21 ("PLAINTIFF") and, pursuant to the terms and provisions of California Code of Civil  
22 Procedure ("CCP"), Section 2032 et al. hereby responds to Defendant [DEFENDANT'S  
23 NAME(S)]'s ("Defendant") Notice of Independent Medical Examination, as follows:

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1           1.     The physical examination must be limited to those clinical examinations  
2 which are specifically set forth in the demand or otherwise agreed to. Generalized  
3 references to “MEDICAL EXAMINATION” are always improper; the statute requires that  
4 Defendant set forth, using specific medical names, the precise exams to be conducted.

5           2.     Pursuant to the provision of CCP, Section 2032.220(a)(2) the physical  
6 examination must be conducted at a location within 75 miles of the residence of the Plaintiff.

7           3.     Pursuant to the provision of CCP, Section 2032.220(d) the physical  
8 examination demanded under subdivision (a) must be scheduled at least 30 days after  
9 service of the demand.

10          4.     Plaintiff may be accompanied by [his/her] attorney or other representative as  
11 allowed by CCP Section 2032.510(a) to observe the examination.

12          5.     The examination may be audiotaped or videotaped by Plaintiff’s  
13 representative as allowed by CCP Section 2032.510(a).

14          6.     A certified shorthand reporter may report the examination as allowed by CCP  
15 Section 2032.510(a).

16          7.     No other persons other than Plaintiff, Plaintiff’s representative, the court  
17 reporter, the defense medical examiner and the defense medical examiner’s staff are allowed  
18 to be present during the examination.

19          8.     Any person assisting the defense medical examiner must be fully identified  
20 by full name and title to Plaintiff and on the court reporter’s record.

21          9.     Plaintiff will not sign any paperwork or fill out any paperwork at the doctor’s  
22 office, including, but not limited to, “patient information forms,” or “consent forms,” since  
23 Plaintiff is not a patient of the defense medical examiner and is consenting to this  
24 examination only pursuant to the requirements of CCP Section 2032. Further, Plaintiff may  
25 not be compelled to create any items of potential documentary evidence and will not fill out  
26 any charts, new patient records, forms or histories that may be requested or provided by the  
27 defense medical examiner.

28           The basis of this objection is that it is oppressive to require a Plaintiff to complete

1 written forms as opposed to answering questions orally. To require Plaintiff to complete  
2 written forms would violate Plaintiff's right not to create items of demonstrative evidence  
3 for Defendant's use. X-rays will not be allowed. Any request to take x-rays is improper,  
4 and Plaintiff also objects to a request for x-rays pursuant to CCP, Section 2032.230(a).  
5 Defendant has already requested this medical information made available for review by the  
6 defense medical examiner through the record subpoenas. There is no need or reason to  
7 compel Plaintiff to the potentials for later cancers due to the x-ray procedure.

8 10. Identification and Personal Information: Plaintiff recognizes the medical  
9 examiner's need to identify the Plaintiff at the time of the examination and will provide the  
10 following information: 1) Full name; 2) Date of Birth; and 3) Current drivers' license.

11 Plaintiff will not provide the defense medical examiner with additional personal  
12 information including, but not limited to, the following: 1) Residence telephone number; 2)  
13 Medical insurance information or other insurance information; 3) Employment history; and  
14 4) Residence address.

15 The basis of this limitation is that the request of the above-listed information would  
16 invade Plaintiff's right of privacy, is impermissibly overbroad and therefore oppressive,  
17 burdensome, and irrelevant to the subject matter of this action. *See Britt vs. Superior Court*,  
18 (1978) 20 Cal.3d 844.

19 11. The examination must be limited to Plaintiff's physical medical condition,  
20 which is in controversy in this action, as provided by CCP Section 2032. Plaintiff will not  
21 discuss the manner in which the underlying accident which gives rise to this litigation  
22 occurred, other than to describe it in general terms. While a physician is allowed to ask  
23 questions regarding Plaintiff's symptoms and injures, the questioning often slides over into  
24 the area of liability, in an improper attempt to produce harmful statements about the  
25 circumstances of the event that is the subject of the lawsuit. Many physicians improperly  
26 turn a defense examination into a form of unmonitored deposition in which the examinee is  
27 orally examined about factual matters at issue in the case but not relevant to the mental or  
28 physical examination. *Sharff vs. Superior Court* (1955) 44 Cal.2d 508, 282 P.2d 896.

1 In *Sharff*, the California Supreme Court held:

2 “The doctor should, of course, be free to ask such questions as may  
3 be necessary to enable him to formulate an intelligent opinion  
4 regarding the nature and extent of the Plaintiffs injuries, but he should  
5 not be allowed to make inquiries into matters not reasonably related  
6 to the legitimate scope of the examination. Whenever a doctor is  
7 selected by the defendant conducts a physical examination of the  
8 Plaintiff, there is always a possibility that improper questions may be  
9 asked . . . .”

10 The legislature has implemented the holding of the *Sharff* case as Section 2032(g),  
11 allowing Plaintiff’s counsel to suspend the examination if the physician exceeds the scope  
12 of permissible questioning.

13 12. Medical History: Plaintiff will answer questions regarding injuries sustained  
14 in the incident which is the subject of this action, but will not allow defendant’s physician  
15 to take a “medical history examination.” Plaintiff will not orally relate medical history not  
16 related to the areas of injuries claimed in this lawsuit.

17 California courts have well recognized the abuses that can occur at defense medical  
18 examinations. The compulsory physical examination is a stage of discovery in a lawsuit.  
19 CCP Section 2032 does not contain any language permitting the defense doctor to conduct  
20 a “medical history” examination of Plaintiff. The statute’s operative term is “physical  
21 examination” (The only exception being sub-division (h) which shows that the omission of  
22 the term “history” throughout the rest of Section 2032 was done deliberately and with  
23 knowledge of the difference between the two terms). Basic statutory interpretation states  
24 that “the court may not add to or detract from a statute’s words to accomplish a purpose  
25 that does not appear on its face or from its legislative history.” *City of Haywood vs. United  
26 Public, etc.; et al.* (1976) 54 Cal.App.3d 761,762, 129; Cal.Rptr. 710 (emphasis added).  
27 Additionally, in *Holm vs. Superior Court* (1980) 187 Cal.App.3d 1241, 232 Cal.Rptr. 432,  
28 the Court of Appeal held that a trial court had acted in excess of its jurisdiction in ordering  
the exhumation of a body in an attempt to discover indisputable relevant facts, as stated at  
page 1247:

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1 “More recent cases have made it clear that the courts are without power to expand  
2 the methods of civil discovery beyond those authorized by statute .... “

3 Similarly, in *Edminston vs. Superior Court* (1978) 22 Cal.3d 699, 704, 150 Cal.Rptr.  
4 276, the Supreme Court in reviewing the statute preceding CCP, Section 2032, refused to  
5 allow videotaping of defense medical exams on the grounds that the procedure was not  
6 “expressly” or “affirmatively” authorized by statute. See also, *Volkswagonwerk vs.*  
7 *Supreme Court* (1981) 123 Cal.App.3d 840. Additionally, a defense doctor’s taking a  
8 medical history of the Plaintiff is contrary to public policy. The new Discovery Act sought  
9 to eliminate redundant or unnecessary discovery, and incorporated the constitutional  
10 doctrine of the right to medical privacy. Further interrogatories, including those set out in  
11 Judicial Counsel form interrogatory Nos. 10.1, 10.2 and 10.3 have already sought  
12 information on Plaintiffs medical history. The mere fact that Plaintiff has filed a personal  
13 injury lawsuit does not indicate that he has waived the right to privacy or the  
14 physician/patient privilege regarding unrelated matters. See, e.g., *Britt vs. Superior Court*  
15 (1978) 20 Cal.3d 844, 864, 143 Cal. Rptr. 695; See also *In Re Lifschutz* (1970) 2 Cal.3d  
16 415, 435, 85 Cal.Rptr. 829, wherein the Supreme Court held that disclosure cannot be  
17 compelled with respect to other aspects of the patient/litigant’s personal history even though  
18 they may, in some sense, be “relevant” to the substantive issues of the litigation.

19 13. It is requested that defense counsel requesting this examination, or a  
20 representative, be available by telephone on the date and time of the examination to resolve  
21 any conflicts that may arise if and when Defendant’s physician asks any questions beyond  
22 the permissible scope as designated by the Court in *Sharff*. If a dispute arises between  
23 Plaintiff’s counsel and Defendant’s doctor regarding the permissible scope of questioning,  
24 and defense counsel, nor a representative is available to resolve the dispute, Plaintiff’s  
25 counsel will use their own best judgment under the circumstances in determining whether  
26 or not to terminate the exam.

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1           14.    Limitation of X-rays and Diagnostic Tests: Absent a court order compelling  
2 same, Plaintiff will not submit to any x-rays. Plaintiff, by and through Plaintiff's counsel,  
3 will authorize access to copies or prior x-ray of the area of the body injured in the underlying  
4 accident. Plaintiff will also not submit to urinalysis.

5           15.    No diagnostic test or procedure that is painful, protracted or intrusive will be  
6 allowed, as set forth in CCP Section 2032(a)(1).

7           16.    No mental examination will be allowed.

8           17.    Financial Responsibility: Plaintiff will not assume financial responsibility for  
9 any of the medical billings arising as a result of the IME, nor will Plaintiff execute an  
10 assignment of benefits form.

11          18.    Plaintiff will not pay any cancellation fee, but will make [his/her] best efforts  
12 to appear as scheduled.

13          19.    Demand for Production of Report: Pursuant to the provisions of CCP, Section  
14 2032.610(a), (b), et seq., Plaintiff demands a copy of the detailed written report of the  
15 examination, setting out the history, examination, findings (including the tests and results  
16 of all tests made), diagnoses, prognoses, and the conclusions of the examiner, all record  
17 review reports, and a copy of all reports of all earlier examinations of the same condition of  
18 the examinee made by that or any other examiner within thirty (30) days thereafter. *See*  
19 *Nehabedian vs. Superior Court*, (1989) 209 Cal. App.3d 396, 257 Cal. Rptr. 254.

20          20.    Assuming that an agreement between respective counsel for the parties with  
21 respect to the limitations set forth herein is reached, Plaintiff will appear at the scheduled  
22 defense medical examination. However, Plaintiff will not be unduly inconvenienced by the  
23 defendant's demanded IME. The starting time of the examination will be within thirty  
24 minutes of the scheduled time unless the doctor is involved in a true medical emergency. If  
25 the IME has not commenced within thirty minutes of the scheduled time, Plaintiff will  
26 consider this protracted delay to be a waiver of defendant's right to the IME and will leave  
27 the medical examiner's office, pursuant to CCP, Section 2032.530.(a).

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21. The total time for examination and testing, if applicable, will not exceed two hours. If any period of time exceeding thirty minutes goes by when Plaintiff is not being examined, either by the defense medical examiner or the defense medical examiner's staff, Plaintiff will be free to leave.

22. If defense counsel has any objection to the question limitations listed hereinabove, Plaintiff requests that defense counsel submit a list of questions as proposed by their physician so that any potential disputes may be resolved prior to the date of the scheduled examination.

23. The defense medical examiner must be provided with a copy of this response prior to the examination.

DATED: May 23, 2018

**SELARZ LAW CORP.**

By: \_\_\_\_\_  
Daniel E. Selarz, Esq.  
**Attorneys for Plaintiff(s),**  
**[Client's Name(s)]**

**PROOF OF SERVICE**  
Case No. [REDACTED]

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I, the undersigned, declare as follows:  
I am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. I am an employee of, or agent for, SELARZ LAW CORP., whose business address is 11777 San Vicente Blvd., Suite 702, Los Angeles, CA 90049.

On May 23, 2018 I served the foregoing document(s) **PLAINTIFF'S RESPONSE TO DEFENDANT'S NOTICE OF INDEPENDENT MEDICAL EXAMINATION** to the following party(ies) in this action addressed as follows:

**PLEASE SEE ATTACHED SERVICE LIST**

- (BY MAIL) I caused a true copy of each document, placed in a sealed envelope with postage fully paid, to be placed in the United States mail at Los Angeles, California. I am "readily familiar" with this firm's business practice for collection and processing of mail, that in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service on that same day. I understand that the service shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- (BY PERSONAL SERVICE) I caused to be delivered each such document by hand to each addressee above.
- (BY CERTIFIED MAIL – CCP §§1020, et seq.) I caused said document(s) to be deposited with the United States Mail, postage prepaid, return receipt requested, signed by addressee that said documents were received.
- (BY OVERNIGHT DELIVERY) I caused a true copy of each document, placed in a sealed envelope with delivery fees provided for, to be deposited in a box regularly maintained by **United Parcel Service®(UPS)**. I am readily familiar with this firm's practice for collection and processing of documents for overnight delivery and know that in the ordinary course of business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS or delivered to a courier or driver authorized by UPS to receive documents on the same date it is placed for collection.
- (BY FACSIMILE) By use of facsimile machine number (310) 651-8681, I served a copy of the within document(s) on the above interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.
- (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 their electronic notification addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on May 23, 2018, in Los Angeles, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_\_  
Daniel E. Selarz



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**SERVICE LIST**

SENT VIA U.S. MAIL

[Attorney's Name]

[Law Firm Name]

[Street Address]

[City, State & Zip Code]

Tel: (xxx) xxx-xxxx / Fax: (xxx) xxx-xxxx

Email: [Email Address]

[Attorneys for Defendant [DEFENDANT'S NAME]]