

## Appendix B-1

### SAMPLE SPECIAL INTERROGATORIES

1. State the total compensation paid by YOU or on YOUR behalf to *[insert name of expert]* RELATING TO PLAINTIFF'S CLAIM. (For the purposes of these requests, the terms "YOU" or "YOUR" means and refers to *[insert name of insurer/benefit plan in dispute]*, and its agents, attorneys, employees, representatives, accountants, and all other PERSONS representing or acting, or purporting to represent or act, on its behalf, including any third-party administrator, vendor, procuring agent, group, and other intermediary. For purposes of these requests, the terms "PERSON" or "PERSONS" means and refers to and includes any natural person, and any third-party administrator, vendor, procuring agent, group, or other intermediary, and any business entity, including but not limited to corporations, partnerships, limited partnerships, other types of limited liability entities, trusts, associations, unincorporated associations, firms, joint ventures, governmental bodies or entities, and their directors, officers, employees, agents, representatives, and attorneys acting on their behalf. For the purposes of these requests, the terms "RELATED TO" or "RELATING TO" or any grammatical variation of such words, refer to, with respect to a given subject, memorializing, identifying, describing, discussing, assessing, stating, referring, constituting, containing, embodying, and/or referring directly or indirectly, in any way, to the particular subject matter defined. For the purposes of these requests, the term "CLAIM" or "CLAIMS" means and refers to a claim made for benefits under a policy of insurance or benefit plan provided by YOU, including without limitation any appeal of a denial of a claim for benefits. For the purposes of these requests, the term "PLAINTIFF'S CLAIM" means and refers to that certain claim reported to YOU and assigned claim number *[insert claim number]*.)

2. State the total compensation paid by YOU or on YOUR behalf to *[insert name of expert]* each year from *[insert year, e.g., 2019]* to the present for services RELATING TO CLAIMS.

3. State the total compensation paid by YOU or on YOUR behalf to any PERSON (e.g., a third-party administrator, vendor, procuring agent, group, or other intermediary) each year from *[insert year, e.g., 2019]* to procure the services of *[insert name of expert]* RELATING TO CLAIMS.

4. Identify each CLAIM (by policy number, claim number, and date of claim) in which *[insert name of expert]* provided an opinion RELATING TO such CLAIM.<sup>1</sup>

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<sup>1</sup> *In unique cases, add geographic and/or temporal constraint to the requests as necessary, such as: "The term "RELEVANT TERRITORY" means and refers to the State of California", and "The term "RELEVANT TIME PERIOD" means and refers to January 1, 2019 through and including the date upon which this subpoena is answered."*

5. Identify each CLAIM (by policy number, claim number, and date of claim) in which *[insert name of expert]* provided an opinion that supported full payment of all benefits sought by the claimant under such CLAIM.

6. Identify each CLAIM (by policy number, claim number and date of claim) in which *[insert name of expert]* provided an opinion that supported full denial of such CLAIM.

7. Identify each CLAIM (by policy number, claim number and date of claim) in which *[insert name of expert]* provided an opinion that supported partial denial of such CLAIM.

8. Identify YOUR process for approving *[insert name of expert]* to perform services for YOU.

9. Identify YOUR process for monitoring the performance of *[insert name of expert]* RELATING TO CLAIMS.

10. Identify all measures YOU have taken to ensure the reliability of *[insert name of expert]*'s opinions RELATING TO CLAIMS.

11. Identify all measures YOU have taken to ensure the neutrality of *[insert name of expert]*'s opinions RELATING TO CLAIMS.

12. Identify YOUR process for retaining *[insert name of expert]* to perform services RELATING TO PLAINTIFF'S CLAIM.

13. Identify all PERSONS involved in retaining *[insert name of expert]* to provide an opinion RELATING TO PLAINTIFF'S CLAIM.

14. For each opinion of *[insert name of expert]* RELATING TO PLAINTIFF'S CLAIM that relies upon experiential knowledge of any matter and for which there is a range of opinions in the professional community concerning the matters subject to such experiential knowledge, please provide a summary of such range of views.

15. For each opinion of *[insert name of expert]* RELATING TO PLAINTIFF'S CLAIM that relies upon subjective interpretation of any matter, and for which there is a range of opinions in the professional community concerning the matters subject to such subjective interpretation, please provide a summary of such range of views.

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## Appendix B-2

### SAMPLE REQUESTS FOR PRODUCTION OF DOCUMENTS

#### DEFINITIONS

For these requests, the following terms shall have the following meanings:

A. The terms “CLAIM” and “CLAIMS” refer to a claim made for benefits under a policy of insurance or benefit plan provided by YOU, including without limitation any appeal of a denial of a claim for benefits.

B. The terms “COMMUNICATION” and “COMMUNICATIONS” mean and refer to all forms of information exchange, whether written, oral, in person, by telephone, facsimile, computer, electronic mail, or other mode of transmission, and shall, concerning oral communications, include all DOCUMENTS which memorialize, in whole or in part, the contents of said oral communications, including correspondence, memoranda, agreements, handwritten notes, transcriptions, or e-mails.

C. The term “DOCUMENT(S)” includes any writing, including, but not limited to, handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of how the record has been stored.

D. The term “ELECTRONIC” includes having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

E. The terms “PERSON” and “PERSONS” refer to any natural persons and legal entities, including corporations, companies, firms, associations, organizations, partnerships, joint ventures, proprietorships, businesses, trusts, limited liability companies, and public entities. Unless noted otherwise, references to any PERSON include their agents, attorneys, employees, employers, officers, directors, or others acting on or purporting to act on behalf of said PERSON.

F. The term “PLAINTIFF” means and refers to *[insert name of Plaintiff]* and their representatives and agents (e.g., attorney).

G. The term “POLICY” refers to that policy of insurance or benefit plan provided by YOU, with reference number *[insert identification number of Policy]*.

H. The terms “RELATED TO” and “RELATING TO” or any grammatical variation of such words, mean and refer to, concerning a given subject, memorializing, identifying, describing, discussing, assessing, stating, referring, constituting, containing, embodying, and referring directly or indirectly, in any way, to the particular subject matter defined.

I. The term “RELEVANT TIME PERIOD” refers to [*insert relevant time period, such as January 1, 2019, through and including the date upon which this request is answered*].

J. The terms “YOU” and “YOUR” mean and refer to [*insert name of insurer/benefit plan in dispute*] and its agents, attorneys, employees, representatives, accountants, and all other persons or entities representing or acting, or purporting to represent or act, on its behalf, including any third-party administrator, vendor, procuring agent, group, and other intermediary.

K. The terms “and” and “or” shall be construed conjunctively and disjunctively to acquire the broadest meaning possible, and each shall include the other whenever such construction serves to bring within the scope of these requests any information that would not otherwise be brought within their scope. The term “any” includes and encompasses “all.” The singular shall always include the plural, and the present tense shall include the past tense.

## **INSTRUCTIONS**

a) Any representation of YOUR inability to comply with any demand shall state, under oath, that a diligent search and reasonable inquiry has been made. In addition, YOU shall specify whether the inability to comply is because the particular DOCUMENTS never existed, have been destroyed, have been lost, misplaced, or stolen, or are no longer in the possession, custody, or control of YOU. This statement shall set forth the name and address of any natural person or organization known or believed by YOU to have possession, custody, or control of that item or category of items.

b) Concerning the production of emails or other electronic documents, each email or electronic document, or grouping of emails or electronic documents, shall be produced in such a fashion so that the identity of the PERSON from whose computer or email account the electronic document or email was taken can be identified or ascertained.

c) If YOU object to the production of any electronically stored information on the grounds that it is from a source that is not reasonably accessible because of undue burden or expense, identify in YOUR response: (a) the types or categories of sources of electronically stored information that YOU assert are not reasonably accessible; (b) the quantity or approximate quantity of electronically stored documents (including, if available, the number of emails) which are not being produced, on a type-by-type, or category-by-category basis; (c) the reasons, stated

with particularity, as to why the electronically stored information is not reasonably accessible, stated on a type-by-type, or category-by-category basis; (d) the estimated number of hours of work, on a type-by-type, or category-by-category basis, that would be required to gain access to and produce the electronically stored information; and (e) the dollar cost, on a type-by-type, or category-by-category basis, that would be required to gain access to and produce the electronically stored information, including copies of any cost estimates or vendor estimates which YOU have obtained pertaining to, or corroborating, the cost of this work.

d) Where DOCUMENTS are produced that were in the possession of third parties who are agents of YOU (such as YOUR attorneys or accountants), the DOCUMENTS shall be produced in such a fashion so that it is ascertainable from which specific third party's files the DOCUMENT(S) was located.

e) These requests include all relevant DOCUMENTS within the possession, custody, or control of YOU, to the maximum extent permitted under applicable law.

f) DOCUMENTS from any single file should be produced in the same order found in such file. If copies of DOCUMENTS are produced instead of the originals, such copies should be legible and bound or stapled similarly. Labels or other file designations should be produced and copied.

g) To the extent that electronically stored information is responsive to any document requests, all such information shall be in their native file formats.

h) To the extent any of these requests for production calls for a DOCUMENT subject to privilege, produce all those DOCUMENTS called for in that request not subject to a claim of privilege and so much of each DOCUMENT subject to a claim of privilege that does not contain privileged information, with redactions if necessary to conceal the privileged information. With respect to any DOCUMENT or portion of any DOCUMENT withheld because of privilege, state in writing the basis for YOUR privilege claim as follows: (a) the date appearing on the DOCUMENT, or if no date appears, the date on which the DOCUMENT was prepared; (b) the title of the DOCUMENT; (c) the name and job title of the person(s) who signed the DOCUMENT, or if not signed, the name and job title of the person(s) who prepared it; (d) the name and job title of each person making any contribution to the authorship of the DOCUMENT; (e) the name and job title of the person(s) to whom the DOCUMENT was addressed; (f) the name and job title of each person, other than the addressee(s) identified in (e) above, to whom the DOCUMENT, or a copy thereof, was sent or with whom the DOCUMENT was discussed; (g) the name, job title, and address of each person who has custody of the DOCUMENT (or any copy thereof); (h) the general nature or description of the DOCUMENT and the number of pages; and (i) the specific ground(s) on which YOUR claim of privilege rests.

## DOCUMENTS REQUESTED FOR IDENTIFICATION AND PRODUCTION

1. All DOCUMENTS that describe your selection, approval, retention, and performance monitoring of *[insert name of expert]*,
2. All DOCUMENTS between YOU and any vendor, procuring agent, group, and other intermediary that is involved in the procurement and provision of *[insert name of expert]*'s services RELATING TO CLAIMS, including without limitation contracts and agreements, memoranda of understanding, service agreements, and vendor agreements.<sup>1</sup>
3. All DOCUMENTS relating to the measures YOU have taken to ensure the reliability, accuracy, and impartiality of *[insert name of expert]*'s opinions, including the procedures YOU employ to oversee and monitor the performance of experts used for investigating claims and including all documents relating to YOUR performance monitoring of *[insert name of expert]*.
4. All DOCUMENTS that identify any potential inaccuracy in *[insert name of expert]*'s opinions, including all complaints (formal and informal) received from insureds and plan participants, their representatives, and regulatory authorities (e.g., California Department of Insurance and U.S. Department of Labor).
5. All DOCUMENTS that identify the amounts paid to *[insert name of expert]* for services related to claims for benefits made to YOU.<sup>1</sup> Please note that YOU may withhold tax forms (e.g., IRS Form 1099) if YOU produce documents that identify the total payments made to *[insert name of expert]* for each year by YOU, and YOU identify such withheld tax forms on a detailed privilege log (including the identification of payee and payor).
6. All DOCUMENTS identifying the number of claims in which *[insert name of expert]* provided any opinions relating to claims made on policies issued by YOU.
7. All DOCUMENTS prepared by *[insert name of expert]* containing opinions relating to claims made on policies issued by YOU.
8. All COMMUNICATIONS between YOU and YOUR insureds that incorporate or

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<sup>1</sup> *In unique cases, add geographic and/or temporal constraint to the requests as necessary, such as: "The term "RELEVANT TERRITORY" means and refers to the State of California", and "The term "RELEVANT TIME PERIOD" means and refers to January 1, 2019 through and including the date upon which this subpoena is answered."*

reference an opinion provided by *[insert name of expert]*.<sup>2</sup>

9. All COMMUNICATIONS between YOU and *[insert name of expert]*. Please note that all emails and a copy of YOUR claim management system's diary, log, notes, or other document reflecting the claim adjuster's notes on the CLAIMS in which *[insert name of expert]* communicated with YOU, if available, is sufficient for this request.

10. All DOCUMENTS that identify the persons, groups, or entities YOU have retained in the last five years to perform services RELATED TO a CLAIM *[in the State of California]*<sup>1</sup> involving *[optional: limit by inserting policy type, nature of Plaintiff's claim, applicable exclusion, or expert's area of expertise]*, together with all documents that identify the number of CLAIMS that such person, group or entity has evaluated for YOU.

11. All DOCUMENTS that identify persons, groups, or entities that claim adjusters may retain to investigate CLAIMS RELATING TO *[optional: limit by inserting policy type, nature of Plaintiff's claim, applicable exclusion, or expert's area of expertise]*. Please note that, if available, a list of the experts, vendors, procuring agents, groups, and other intermediaries (e.g., a preferred or approved vendor list) is sufficient for this request.

12. All DOCUMENTS that identify the fields in YOUR database(s) for monitoring claims, and the tools or methods available to perform a search on such database.

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<sup>2</sup> Optional: If expert was retained for more than 50 claims, consider sampling and/or limiting to interim and final coverage decisions and emails.



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## Appendix B-3

### SAMPLE REQUEST FOR ADMISSIONS

1. Admit that in or about the month of *[insert month and year of Plaintiff's Claim]*, PLAINTIFF reported PLAINTIFF'S CLAIM to YOU. (For these requests, the terms "YOU" or "YOUR" means and refers to *[insert name of insurer/benefit plan in dispute]* and its agents, attorneys, employees, representatives, accountants, and all other persons or entities representing or acting, or purporting to represent or act, on its behalf, including any third-party administrator, vendor, procuring agent, group, and other intermediary. For these requests, the term "PLAINTIFF" means and refers to *[insert Plaintiff's name]*. For these requests, "PLAINTIFF'S CLAIM" refers to a particular claim reported to YOU and the assigned claim number *[insert claim number]*. For these requests, the term "PLAINTIFF'S POLICY" means and refers to that policy of insurance or benefit plan provided by YOU, with reference number *[insert account number of policy/plan]*.)

2. Admit that the damage PLAINTIFF suffered relating to PLAINTIFF'S CLAIM was caused by a covered peril under PLAINTIFF'S POLICY.

3. Admit that the damages PLAINTIFF suffered relating to PLAINTIFF'S CLAIM are not excluded from coverage under PLAINTIFF'S POLICY.

4. Admit that PLAINTIFF has reported PLAINTIFF'S CLAIM to YOU in a timely manner under PLAINTIFF'S POLICY.

5. Admit that PLAINTIFF has substantially complied with all relevant terms and conditions of PLAINTIFF'S POLICY pertaining to PLAINTIFF'S CLAIM.

6. Admit that YOU did not pay to PLAINTIFF all benefits due under PLAINTIFF'S POLICY pertaining to PLAINTIFF'S CLAIM.

7. Admit that YOU did not thoroughly investigate PLAINTIFF'S CLAIM.

8. Admit that YOU did not investigate PLAINTIFF'S CLAIM fairly.

9. Admit that YOU have a pattern and practice of minimizing CLAIM payments to insureds under policies issued by YOU based on *[insert applicable exclusion or specific reason]*. (For these requests, the term "CLAIM" or "CLAIMS" means and refers to a claim made for benefits under a policy of insurance or benefit plan provided by YOU, including without limitation any appeal of a denial of a claim for benefits.)

10. Admit that YOU frequently rely on opinions from *[name of expert]* in YOUR coverage decisions on CLAIMS.

11. Admit that *[name of expert]* received substantial compensation for providing YOU opinions about CLAIMS.
12. Admit that the principles and methodologies used by *[insert name of expert]* in rendering their opinions on PLAINTIFF'S CLAIM are unreliable.
13. Admit that the test results utilized by *[insert name of expert]* in rendering their opinions on PLAINTIFF'S CLAIM are not independently verifiable.
14. Admit that *[insert name of expert]* did not reliably apply generally accepted principles and methodologies in rendering their opinions for PLAINTIFF'S CLAIM.
15. Admit that *[name of expert]* did not reliably apply the facts to the principles and methodologies they relied upon in reaching their opinions for PLAINTIFF'S CLAIM.
16. Admit that YOU did not take reasonable measures to ensure that *[insert name of expert]*'s opinions were impartial.
17. Admit that YOU did not take reasonable measures to ensure that *[insert name of expert]*'s opinions were reliable.
18. Admit that YOU did not take reasonable measures to ensure that *[insert name of expert]*'s opinions were accurate.
19. Admit that substantial evidence exists that *[insert name of expert]* performed a biased investigation of PLAINTIFF'S CLAIM.
20. Admit that *[name of expert]* has a pattern and practice of offering opinions unfavorable to YOUR insureds.
21. Admit that *[insert name of expert]* has a pattern and practice of performing biased investigations of CLAIMS for YOU.

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## Appendix B-4

### SUBPOENA FOR THIRD-PARTY EXPERT ATTACHMENTS “3” AND “4” DEFINITIONS

A. The terms “CLAIM” and “CLAIMS” refer to a claim made for benefits under a policy of insurance or benefit plan provided by YOU, including without limitation any appeal of a denial of a claim for benefits.

B. The term “DOCUMENT(S)” includes any writing, including, but not limited to, handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of how the record has been stored.

C. The terms “and” and “or” shall be construed conjunctively and disjunctively to acquire the broadest meaning possible, and each shall include the other whenever such construction serves to bring within the scope of these requests any information that would not otherwise be brought within their scope. The term “any” includes and encompasses “all.” The singular shall always include the plural, and the present tense shall include the past tense.

### REQUEST FOR PRODUCTION OF DOCUMENTS

1. All DOCUMENTS reflecting any income you received for your services performed for or on behalf of *[insert name of insurer/benefit plan in dispute]*. Please identify the amounts by year, and please identify separately the amounts you received for services related to: (1) employee benefit plans, (2) worker’s compensation benefits, and (3) social security benefits.<sup>1</sup>

2. All DOCUMENTS reflecting any income you received for services you performed for or on behalf of insurers and benefit plans other than *[insert name of insurer/benefit plan in dispute]*.

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<sup>1</sup> *In unique cases, add geographic and/or temporal constraint to the requests as necessary, such as: “The term “RELEVANT TERRITORY” means and refers to the State of California”, and “The term “RELEVANT TIME PERIOD” means and refers to January 1, 2019 through and including the date upon which this subpoena is answered.”*

3. All DOCUMENTS reflecting any income you received for your services from claimants and their representatives relating to their insurance and benefit plan CLAIMS.

4. All DOCUMENTS reflecting the number of CLAIMS you were retained by or on behalf of *[insert name of insurer/benefit plan in dispute]*.

5. All DOCUMENTS reflecting the number of CLAIMS in which you were retained by or on behalf of insurers and benefit plans other than *[insert name of insurer/benefit plan in dispute]*.

6. All DOCUMENTS reflecting the number of CLAIMS claimants retained you.

7. All DOCUMENTS reflecting opinions you offered to or on behalf of *[insert name of insurer/benefit plan in dispute]*.

8. All communications between you and *[insert name of insurer/benefit plan in dispute]*. Please note that copies of all emails between you and *[insert name of insurer/benefit plan in dispute]* in electronic format are sufficient for this request.

#### **DEPOSITION TOPICS**

1. Principles and theories that you relied upon in evaluating *[insert name of Plaintiff]*'s claim.

2. Methodologies used in evaluating *[insert name of Plaintiff]*'s claim.

3. Nature and type of services you perform for or on behalf of *[insert name of insurer/benefit plan in dispute]*.

4. Measures you have taken to ensure the reliability and accuracy of your opinions for insurers and benefit plans.

5. Measures you have taken to ensure the impartiality of your opinions for insurers and benefit plans.

6. Communications between you and *[insert name of insurer/benefit plan in dispute]*.

7. Compensation you receive for services you perform for or on behalf of *[insert name of insurer/benefit plan at issue in the dispute]*, including the total amount broken down annually.

8. Compensation you receive for services you perform for or on behalf of insurers and

benefit plans other than *[insert name of insurer/benefit plan at issue in the dispute]*, including the total amount broken down annually.

9. Compensation from claimants and their representatives for services you perform on CLAIMS, including the total amount broken down annually. If you performed any work for claimants, please separately identify the amounts you received for services relating to: (1) employee benefit plans, (2) worker's compensation benefits, and (3) social security benefits.

10. Number of CLAIMS in which you performed services for or on behalf of *[insert name of insurer/benefit plan at issue in the dispute]*, including the number of CLAIMS broken down annually.

11. Number of CLAIMS in which you performed services for or on behalf of insurers and benefit plans other than *[insert name of insurer/benefit plan at issue in the dispute]*, including the number of CLAIMS broken down annually.

12. Number of CLAIMS in which claimants retained you, including the number of CLAIMS broken down annually.

13. The percentage of CLAIMS in which you perform services for or on behalf of insurers and benefit plans versus the percentage of CLAIMS in which you perform services for claimants is broken down annually.

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