

In my opinion, the article by Lauren E. Godshall in the September issue titled “Using Effective Contract Language in Arbitration Agreements” on the “unreviewability” of arbitration decisions falls short for a failure to discuss two high court decisions; namely, *Hall Street v. Mattel*, 128 S. Ct. 1396 (2008) and *Cable Connection, Inc. v. DirectTV, Inc.*, \_\_\_ Cal. 4th \_\_\_ (2008). The implications are as follows. In *Hall*, the U.S. Supreme Court recognized that Rule 16 of the Federal Rules of Civil Procedure might support review of an arbitration decision on the merits. In *Cable Connection*, the California Supreme Court held that parties may limit an arbitrator’s authority by providing for judicial review on the merits in an arbitration agreement. The *Cable Connection* decision was construed by the Second District in an unpublished decision in *Raymond v. Flynt* to permit review of errors of law and legal reasoning with no requirement that there be a verbatim transcript.

**Howard Hoffenberg**

I suspect I’m not the first to suggest that you check on an apparent error in the MCLE piece (“Life after 64,” By Benjamin M. Weiss and Michael A. Geibelson, September 2008) in *Los Angeles Lawyer*. The piece indicates that, since the California Supreme Court decided *In re Tobacco II*, 41 Cal. 4th 1257 (2007) last year, two other cases taken up by the court on a “grant and hold” basis—*McAdams v. Monier and Pfizer, Inc. v. Superior Court (Galfano)*—will provide the vehicle for the court to resolve certain unsettled issues regarding implementation of Proposition 64’s amendments to the Unfair Competition Law. Unfortunately, the authors were confusing two different *In re Tobacco II* cases—the one that is the lead case on the Proposition 64 issues has not yet been argued, much less decided, as is apparent from the court’s online docket information. We wouldn’t want readers to be misled by the misinformation, and the authors’ statement that, “The review by the supreme

court of *Pfizer* and *McAdams* is being closely watched because the cases do not involve the preemption issue in *Tobacco II*.” It was the earlier, unrelated, 2007 case, not the still-pending case, that involved a preemption issue. Question number 7 in MCLE Test No. 173 therefore is a bit off.

**Lisa Perrochet**

In response to Paul Eisner’s article, “Will Someone Please Clean up the Form Interrogatories Mess?” (Closing Argument, October 2008) concerning the supposed mess of form interrogatories, he has got it wrong. The case he cites, *Cantanese v. Superior Court*, 46 Cal. App. 4th 1159 (1996), concerns the abuse of the 35 special interrogatories as per the old code referring to Code of Civil Procedure Section 2030(c)(2), not form interrogatories. The case held as follows:

The Court of Appeal ordered issuance of a writ of mandate directing the trial court to vacate its order granting plaintiff’s motion to compel further answers to interrogatories and to issue a new and different order denying the motion. The court held that the interrogatories violated the rule of 35 and the requirement of self-containment. The interrogatories were not self-contained as they necessarily incorporated, as part of each interrogatory, each separate question and answer in eight volumes of deposition. An interrogatory is not “full and complete in and of itself” when resort must necessarily be made to other materials in order to complete the question. Further, in light of the volume of questions and answers in the deposition, the interrogatories, in effect, posed upwards of 10,000 questions, which violated the rule of 35. Moreover, by treating the interrogatories as consisting of only five, plaintiff failed to file a declaration for avoiding the rule of 35 (Code of Civil

Procedure §2030(c)(2)), thereby preventing defendant from seeking a protective order.

There is no subsequent case citing *Cantanese* that ever mentions form interrogatories. Specially prepared interrogatories are controlled by Code of Civil Procedure Sections 2030.030(a)(1), (b)-(c), 2030.040, 2030.050, and 2030.060. Form interrogatories are controlled by Code of Civil Procedure Section 2030.030(a)(2) referring to Code of Civil Procedure Section 2033.710, which states: “The Judicial Council shall develop and approve form interrogatories...for use in any civil action in the state based upon” the enumerated types of cases. Consequently, form interrogatories are an exception to the 35 special interrogatory limit, not another form of special interrogatories.

Absent a case holding otherwise, Mr. Eisner should not be advising anyone that he or she can “properly” object to form interrogatories 15.1 and 17.1 and the use of box 1 concerning Incident as being “incomplete.” There may be other reasons to object to other form interrogatories, such as 12.2 and 12.3, because such questions may invade the work product doctrine. Otherwise, he or she should fully answer the questions 15.1 and 17.1 and stop advising counsel to engage in obstructionist tactics that only add cost and waste time in unnecessary law and motion.

**Will Jay Pirkey**

### The Author Replies:

Will Jay Pirkey’s letter overlooks that the identical language “Each interrogatory shall be full and complete in and of itself.” is present in both the current Code of Civil Procedure Section 2030.060(d) and former Section 2030(c)(5) and is broader than the “No specially prepared interrogatory shall contain subparts, or a compound, conjunctive or disjunctive question.” (This is the language of the current Section 2030.060(f) and former Section 2030(c)(5)).

**Paul Eisner**