

1 SELARZ LAW CORP.
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5 **Attorneys for Plaintiff(s),**
[CLIENT'S NAME(S)]
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF [COUNTY], [DISTRICT]**
9

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

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

**NOTICE OF MOTION AND MOTION
TO COMPEL RESPONSES, WITHOUT
OBJECTIONS, TO REQUEST FOR
PRODUCTION OF DOCUMENTS, SET
NO. [#] AND REQUEST FOR ORDER
AWARDING MONETARY
SANCTIONS AGAINST DEFENDANT
AND DEFENSE COUNSEL IN THE
SUM OF \$560.00; MEMORANDUM OF
POINTS AND AUTHORITIES**

Filed Concurrently with Declaration of
Daniel E. Selarz, Esq, and Exhibits;
[Proposed] Order

[California Code of Civil Procedure
("CCP") § 2031.300]

Date: []
Time: []
Dept.: []

Action Filed: []
Trial Date: []

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1 TO THE COURT, ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF
2 RECORD:

3 PLEASE TAKE NOTICE that on [Date], at [Time] or as soon thereafter as the matter
4 may be heard in Department [#] of the above-entitled court, Plaintiff [CLIENT’S NAME]
5 (“Plaintiff”), will move the court for an order compelling Defendant, [DEFENDANT’S
6 NAME] (“Defendant”), to serve full and complete verified responses, without objections,
7 to Request for Production of Documents, Set No. [#], served on Defendant on [Date].

8 Notice is further given that Plaintiff will request that the Court award monetary
9 sanctions against Defendant and Defense Counsel, and in favor of Plaintiff in the sum of
10 \$560.00 pursuant to *CCP* §§ 2023.010 et seq., 2031.300.

11 This motion is made pursuant to *CCP* § 2031.300 on the grounds that the Defendant
12 has failed, without justification, to respond to this proper discovery, and has waived
13 Defendant’s right to object to these requests. Unverified responses are tantamount to no
14 response at all (*e.g.*, *Garber & Assocs. v. Eskandarian* (2007) 150 Cal.App.4th 813, 817 n.4
15 [interrogatories]; *Food 4 Less Supermkts., Inc. v. Superior Ct.* (1995) 40 Cal.App.4th 651,
16 657-58 [demand to produce]; *Appleton v. Superior Ct.* (1988) 206 Cal.App.3d 632, 635-36
17 [RFAs]).

18 This motion is further based upon this notice; the attached Memorandum of Points
19 and Authorities; the Declaration of Daniel E. Selarz and Exhibits, filed herewith; upon the
20 records and files in this action; and upon such further evidence and argument as may be
21 presented prior to or at the time of hearing on the motion.

22
23 DATED: May 24, 2020 **SELARZ LAW CORP.**

24
25 By: _____
26 Daniel E. Selarz, Esq.
27 **Attorneys for Plaintiff(s),**
28 [Client’s Name(s)]

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The present case arises out of a [Date], [Type of Accident], resulting in personal
4 injuries to Plaintiff [Client’s Name] (“Plaintiff”). On [Date], Plaintiff served Request for
5 Production of Documents, Set No. [#], on Defendant. (Declaration of Daniel E. Selarz, Esq.,
6 (“Selarz Decl.”) ¶2; Exhibit “A”.) Responses to these discovery requests, pursuant to
7 pursuant to CCP §§ 2031.210, 2031.220, 2031.230, 2031.240 were due on [Date]. [Thirty-
8 day response plus five calendar days if served by mail (CCP § 1013(a))]. Defendant failed
9 to provide any responses to Plaintiff’s Request for Production of Documents, Set No. [#].
10 (Selarz Decl., ¶3). Unverified responses are tantamount to no response at all (e.g., *Garber*
11 *& Assocs. v. Eskandarian* (2007) 150 Cal.App.4th 813, 817 n.4 [interrogatories]; *Food 4*
12 *Less Supermks., Inc. v. Superior Ct.* (1995) 40 Cal.App.4th 651, 657-58 [demand to
13 produce]; *Appleton v. Superior Ct.* (1988) 206 Cal.App.3d 632, 635-36 [RFAs]).

14 Although the California Civil Discovery Act does not require a meet and confer prior
15 to filing a motion to compel initial responses, *See* CCP § 2031.300, on [Date], Plaintiff sent
16 a Meet and Confer Letter to Defense Counsel, requesting verified substantive responses,
17 unilaterally allowing fifteen additional days to provide verified substantive responses.
18 (Selarz Decl., ¶4; Exhibit “B”.) It is now May 24, 2020, and, even after making efforts to
19 meet and confer, granting a unilateral discovery extension, Defendant has provided no
20 responses to Plaintiff’s Request for Production of Documents, Set [#]. (Selarz Decl., ¶¶3-
21 5.)

22 As a result of Defendant’s willful refusal to serve responses to these requests, Plaintiff
23 is unable to proceed with meaningful discovery. The information requested is necessary in
24 order to proceed with depositions, and to effectively prosecute this action and prepare for
25 trial. Accordingly, Plaintiff is forced to file the present motion, requesting a Court order
26 compelling Defendant, to serve full and complete verified responses, without objections, to
27 Request for Production of Documents, Set No. [#], served on Defendant on [Date].
28 Furthermore, Plaintiff requests monetary sanctions against Defendant and Defense Counsel,

1 jointly, for their misuse of the discovery process and because there is no showing that they
2 acted with substantial justification or that other circumstances make the imposition unjust.

3 **II. THE COURT IS AUTHORIZED TO COMPEL FULL AND COMPLETE**
4 **ANSWERS, WITHOUT OBJECTIONS, TO THESE INSPECTION**
5 **DEMANDS**

6 The California Discovery Act is unequivocal regarding a party's burden to make a
7 reasonable and good faith effort to obtain the information and documents sought in
8 Plaintiff's discovery requests, and to furnish complete and responsive discovery responses.
9 *Pantzas v. Sup. Ct.* (1969) 272 Cal.App.2d 499, 503; *CCP* §§ 2030.220, 2031.230. "If a
10 party to whom requests are directed fails to serve a timely response ... (b) The party
11 propounding the requests may move for an order compelling response to the requests." *CCP*
12 § 2031.300. The party who fails to serve a timely response "waives any right to exercise the
13 option to produce writings under Section 2030.230, as well as any objection to the requests,
14 including one based on privilege or on the protection for work product under Chapter 4
15 (commencing with Section 2018.010)." *CCP* § 2031.300(a).

16 The service and filing of requests pursuant to *CCP* § 2030.010 et seq. places the
17 burden on the interrogated party to respond by response, the production of writings, or
18 objection. The obligation of response must be satisfied unless excused by a protective order
19 obtained on a factual showing of good cause why no response should be given. *Coriell v.*
20 *Superior Court*, (1974) 39 Cal.App.3D 487, 492. The party served with requests has the
21 burden of persuasion in establishing good cause why they should not be responded. (*Coriell*
22 *v. Superior Court*, 39 Cal. App. 3d 487, 489, 114 Cal. Rptr. 310 (2d Dist. 1974).) Defendant
23 cannot meet this burden, nor has made any attempt to obtain a protective order. The
24 propounding party's remedy is to file a motion to compel responses or further responses,
25 and to seek monetary sanctions.

26 As mentioned above, the time for Defendant to serve a timely response has expired
27 and Plaintiff has received no responses to date. (Selarz Decl., ¶¶4, 6.) No further extensions
28 were granted beyond that noted above, and Defendant's responses, without objections, were

1 due on [Date]. Defendant’s right to object to any of the questions propounded in these
2 requests has been waived. Defendant’s willful refusal to respond be deemed the result of
3 mistake, inadvertence, or excusable neglect for the purposes of relief from waiver of
4 objections under *CCP* § 2031.300(a). Accordingly, Plaintiff requests the Court to order
5 compelling Defendant, to serve full and complete verified responses, without objections.

6 **III. THIS MOVING PARTY HAS ATTEMPTED TO AVOID THIS MOTION**

7 Although no meet and confer declaration is required under *CCP* § 2031.300, Plaintiff
8 has nevertheless made a good faith attempt to resolve this matter informally with opposing
9 counsel, even unilaterally allowing for an extension to provide responses. (Selarz Decl., ¶4;
10 Exhibit “B”.) Plaintiff’s attempt, however, was futile, necessitating the instant motion.

11 **IV. MONETARY SANCTIONS AGAINST DEFENDANT AND DEFENSE**
12 **COUNSEL ARE WARRANTED FOR FAILURE TO RESPOND TO**
13 **LEGITIMATE DISCOVERY AND FOR NECESSITATING THIS**
14 **MOTION**

15 “To the extent authorized by the chapter governing any particular discovery method
16 or any other provision of this title, the court, after notice to any affected party, person or
17 attorney, and after opportunity for hearing may impose ... sanctions against anyone
18 engaging in conduct that is a misuse of the discovery process...” *CCP* § 2023.030. “Misuses
19 of the discovery process include, but are not limited to ... (d) Failing to respond or to submit
20 to an authorized method of discovery...(h) Making or opposing, unsuccessfully and without
21 substantial justification, a motion to compel or to limit discovery.” *CCP* § 2023.010.

22 “The court *shall* impose a monetary sanction under Chapter 7 (commencing with
23 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or
24 opposes a motion to compel a response to requests, unless it finds that the one subject to the
25 sanction acted with substantial justification or that other circumstances make the imposition
26 of the sanction unjust.” *CCP* § 2031.300(c) (*emph. added.*). These sanctions may be
27 awarded under the Discovery Act in favor of a party who files a motion to compel discovery,
28 even though no opposition to the motion was filed, or an opposition to the motion was

1 withdrawn, or the requested discovery was provided to the moving party after the motion
2 was filed. *Cal. Rules of Ct.*, Rule 3.1030(a).

3 In the present case, there is no excuse or justification for Defendant’s refusal to
4 provide responses to the subject discovery. The Declaration of Daniel E. Selarz, Esq.
5 submitted herewith attests to the efforts expended on the part of this moving party to avoid
6 this motion. The purpose of discovery sanctions is to prevent abuse of the discovery process
7 and correct the problem presented. *Do v. Superior Court*, 109 Cal. App. 4th 1210, 1213,
8 135 Cal. Rptr. 2d 855 (4th Dist. 2003). It is evident from the facts presented that Defendant
9 will not comply with this authorized method of discovery absent a court order and the
10 imposition of sanctions.

11 In the present case, Plaintiff has incurred \$560.00 in costs and attorneys’ fees in
12 connection with this motion and enforcing this discovery. (Selarz Decl., ¶7.) Pursuant to
13 *CCP* §§ 2023.010, 2023.030, and 2031.300(c), and the power of this court to impose
14 monetary sanctions against the losing party on a motion to compel responses to requests,
15 Plaintiff submits that given the attempts by Plaintiff to avoid this motion, and the lack of any
16 responses whatsoever, sanctions should properly be awarded to Plaintiff, and against
17 Defendant and Defense Counsel of record in the amount of \$560.00, as reflected in the
18 Declaration of Daniel E. Selarz, Esq.

19 **V. CONCLUSION**

20 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order
21 compelling Defendant to provide full and complete verified responses, without objections,
22 to Plaintiff’s Request for Production of Documents, Set [#] propounded on [Date].
23 Additionally, Plaintiff respectfully requests monetary sanctions be awarded in the amount
24 of \$560.00 against Defendant and Defense Counsel, jointly, and in favor of Plaintiff for
25 misuse of discovery without substantial justification and for Defendant’s willful violation of
26 the discovery statutes discussed herein.

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DATED: May 24, 2020

SELARZ LAW CORP.

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

1 SELARZ LAW CORP.
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5 **Attorneys for Plaintiff(s),**
[CLIENT'S NAME(S)]
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF [COUNTY], [DISTRICT]**
9

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

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

DECLARATION OF DANIEL E. SELARZ, ESQ. AND EXHIBITS IN SUPPORT OF MOTION TO COMPEL RESPONSES, WITHOUT OBJECTIONS, TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. [#] AND REQUEST FOR ORDER AWARDING MONETARY SANCTIONS AGAINST DEFENDANT AND DEFENSE COUNSEL IN THE SUM OF \$560.00

Filed Concurrently with Notice of Motion and Motion to Compel Responses, Without Objections, to Request for Production of Documents, Set No. [#] and Request for Order Awarding Monetary Sanctions Against Defendant and Defense Counsel in the Sum Of \$560.00; Memorandum of Points and Authorities; [Proposed] Order

[California Code of Civil Procedure ("CCP") § 2031.300]

Date: []
Time: []
Dept.: []

Action Filed: []
Trial Date: []

1 I, Daniel E. Selarz, Esq., declare as follows:

2 1. I am an attorney duly licensed to practice law before all courts of the State of
3 California. My law firm, Selarz Law Corp., is counsel for Plaintiff in this action. This
4 declaration is submitted in support of Plaintiff’s Motion to Compel Responses, Without
5 Objections, to Request for Production of Documents, Set No. [#] and Request for Order
6 Awarding Monetary Sanctions Against Defendant and Defense Counsel in the Sum Of
7 \$560.00. The following facts are within my personal knowledge and, if called as a witness
8 herein, I can and will competently testify thereto.

9 2. On [Date], our office served Plaintiff’s Request for Production of Documents,
10 Set [#], on Defendant [DEFENDANT’S NAME] (“Defendant”). A true and correct copy,
11 with proof of service, is attached hereto as Exhibit “A.”

12 3. Defendant failed to provide responses to Plaintiff’s Request for Production of
13 Documents, Set [#] by the statutory deadline. *CCP* §§ 2031.210, 2031.220, 2031.230,
14 2031.240. [Thirty-day response plus five calendar days if served by mail (*CCP* § 1013(a))].

15 4. On [Date], our office sent a Meet and Confer Letter to Defense Counsel,
16 requesting verified substantive responses, without objections, unilaterally allowing an
17 additional fifteen days to provide verified substantive response. A true and copy is attached
18 hereto as Exhibit “B.”

19 5. As of the date of filing the present motion, our office has not received any
20 responses to Plaintiff’s Request for Production of Documents, Set [#].

21 6. No protective order was obtained by Defendant and no good cause exists for
22 seeking such.

23 7. I ask that the court award sanctions in the amount of \$560.00. I base my
24 request for the imposition of a sanction on the basis that it took me two hours to prepare the
25 instant motion. My hourly wage is \$250.00 per hour times two hours, which equals \$500.00.
26 In addition, the motion filing fee for this motion was \$60.00.

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

Dated: May 24, 2020

By: _____
Daniel E. Selarz, Esq.

1 SELARZ LAW CORP.
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2 *dselarz@selarzlaws.com*
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5 **Attorneys for Plaintiff(s),**
[CLIENT'S NAME(S)]
6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF [COUNTY], [DISTRICT]**
9

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

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

**[PROPOSED] ORDER COMPELLING
RESPONSES, WITHOUT
OBJECTIONS, TO REQUEST FOR
PRODUCTION OF DOCUMENTS**

Filed Concurrently with Notice of Motion
and Motion and Motion to Compel
Responses, Without Objections, to Request
for Production of Documents, Set No. [#]
and Request for Order Awarding Monetary
Sanctions Against Defendant and Defense
Counsel in the Sum Of \$560.00;
Memorandum of Points and Authorities;
Declaration of Daniel E. Selarz, Esq, and
Exhibits

[*California Code of Civil Procedure*
("CCP") § 2031.300]

Date: []
Time: []
Dept.: []

Action Filed: []
Trial Date: []

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1 This matter came on regularly before the Court for hearing on [Date]. The Court,
2 having reviewed the moving and opposing papers on Plaintiff’s Motion to Compel
3 Responses, Without Objections, to Request for Production of Documents, Set No. [#] and
4 Request for Order Awarding Monetary Sanctions Against Defendant and Defense Counsel
5 in the Sum Of \$560.00; and oral argument of counsel having been received by the Court:
6

7 The Court finds, adjudges and orders as follows:

8 1. That Plaintiff’s Motion is hereby GRANTED;

9 2. That Defendant is hereby ordered to serve full and complete verified
10 responses, without objections, to Request for Production of Documents, Set No. [#], served
11 on Defendant by Plaintiff on [Date].

12 3. That said verified responses, without objections, shall be served on the
13 propounding party no later than _____.

14 IT IS FURTHER ORDERED:

15 4. That monetary sanctions be imposed jointly against Defendant and Defense
16 Counsel, in the sum of \$_____.

17 5. IT IS FURTHER ORDERED as follows: _____
18 _____
19 _____.

20 IT IS SO ORDERED.
21
22

23 Date: _____

The Honorable [Name of Judge]
[City] Superior Court

PROOF OF SERVICE

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 24, 2020 I served the foregoing document(s) **NOTICE OF MOTION AND MOTION TO COMPEL RESPONSES, WITHOUT OBJECTIONS, TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. [#] AND REQUEST FOR ORDER AWARDING MONETARY SANCTIONS AGAINST DEFENDANT AND DEFENSE COUNSEL IN THE SUM OF \$560.00; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DANIEL E. SELARZ, ESQ. AND EXHIBITS; [PROPOSED] ORDER** 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 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 24, 2020, 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]]