

1 SELARZ LAW CORP.
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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,
vs.
12 [DEFENDANT(S)], and DOES 1 to [#],
13 inclusive,
14 Defendants.

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

**NOTICE OF MOTION AND MOTION
TO DEEM THE TRUTH OF MATTERS
SPECIFIED IN REQUEST FOR
ADMISSIONS, SET NO. [#]
ADMITTED 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") § 2033.280]

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 deeming the truth of all matters specified in
6 Request for Admissions, Set No. [#] admitted and conclusively established, served on
7 Defendant [DEFENDANT’S NAME] 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., 2033.280(c).

11 This motion is made pursuant to C.C.P. § 2033.280 on the grounds that the
12 responding party has failed to timely serve responses to these admissions requests.
13 Unverified responses are equivalent to “no response at all” and therefore do not constitute
14 “substantial compliance” with *CCP* § 2033.220. (*Allen-Pacific, Ltd. v. Superior Court*, 57
15 Cal. App. 4th 1546, 1551, 67 Cal. Rptr. 2d 804 (1st Dist. 1997) (disapproved on other
16 grounds in *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 983, 90 Cal. Rptr. 2d 260, 987 P.2d 727
17 (1999)); *See also Appleton v. Superior Court*, 206 Cal. App. 3d 632, 636, 253 Cal. Rptr.
18 762 (3d Dist. 1988).).

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

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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 **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 Admissions, Set No. [#], on Defendant [DEFENDANT’S NAME] (“Defendant”).
6 (Declaration of Daniel E. Selarz, Esq., (“Selarz Decl.”) ¶2; Exhibit “A”.) Responses to these
7 discovery requests, pursuant to pursuant to CCP § 2033.250(a), 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 Admissions, Set No. [#]. (Selarz Decl.,
10 ¶3).

11 Although no warning or attempts at an informal resolution are required prior to
12 making a motion to deem matters admitted where no responses are received (*Demyer v.*
13 *Costa Mesa Mobile Home Estates*, 36 Cal. App. 4th 393, 395, 42 Cal. Rptr. 2d 260 (4th Dist.
14 1995) (disapproved on other grounds in, *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 90 Cal. Rptr.
15 2d 260, 987 P.2d 727 (1999)); *Leach v. Superior Court*, 111 Cal. App. 3d 902, 906, 169 Cal.
16 Rptr. 42 (3d Dist. 1980)), on [Date], Plaintiff sent a Meet and Confer Letter to Defense
17 Counsel, requesting verified substantive responses, unilaterally allowing fifteen additional
18 days to provide verified substantive responses. (Selarz Decl., ¶4; Exhibit “B”.) It is now
19 May 24, 2020, and, even after making efforts to meet and confer, granting a unilateral
20 discovery extension, Defendant has provided no responses to Plaintiff’s Request for
21 Admissions, Set [#]. (Selarz Decl., ¶¶3-5.)

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 Admissions, Set No. [#], served on Defendant on [Date]. Furthermore, Plaintiff
28 requests monetary sanctions against Defendant and Defense Counsel, jointly, for their

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

3 **II. THE COURT IS AUTHORIZED TO ORDER THAT THE TRUTH OF**
4 **MATTERS SPECIFIED BE DEEMED ADMITTED**

5 The California Discovery Act is unequivocal regarding a party's burden to make a
6 reasonable and good faith effort to obtain the information and documents sought in
7 Plaintiff's discovery requests, and to furnish complete and responsive discovery responses.
8 *Pantzas v. Sup. Ct.* (1969) 272 Cal.App.2d 499, 503; CCP §§ 2030.220, 2031.230. "If a
9 party to whom requests for admission have been directed fails to serve a timely
10 response...[t]he requesting party may move for an order that the genuineness of any
11 documents and the truth of any matters specified in the requests be deemed admitted, as well
12 as for a monetary sanction under Chapter 7 (commencing with Section 2023.010)." CCP §
13 2033.280(b). A deemed admitted order establishes, by judicial fiat, that a nonresponding
14 party has responded to the requests by admitting the truth of all matters contained therein.
15 *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 979, 90 Cal. Rptr. 2d 260, 987 P.2d 727 (1999). Any
16 matter admitted in response to a request for admission is conclusively established against
17 the party making the admission in the pending action, unless the court has permitted
18 withdrawal or amendment of that admission under C.C.P. § 2033.300. (*See CCP §*
19 *2033.410.*)

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

3 A. Later-Served Responses In Substantial Compliance.

4 “The court shall make this order, unless it finds that the party to whom the requests
5 for admission have been directed has served, before the hearing on the motion, a proposed
6 response to the requests for admission that is in substantial compliance with Section
7 2033.220 [scope and requirements of response].” *CCP* § 2033.280(c). If no responses are
8 served prior to the hearing on this motion, the court has no discretion but to grant this motion
9 and deem the truth of the matters specified admitted. *Demyer v. Costa Mesa Mobile Home*
10 *Estates*, 36 Cal. App. 4th 393, 395–96, 42 Cal. Rptr. 2d 260 (4th Dist. 1995) (disapproved
11 on other grounds in *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 983, 90 Cal. Rptr. 2d 260, 987
12 P.2d 727 (1999)).

13 B. Defendant Has Waived The Right To Object To These Requests

14 Regardless of whether Defendant serves responses in substantial compliance with
15 C.C.P. § 2033.220 prior to the hearing on this motion, Defendant has waived any right to
16 object to these admissions requests. “The party who fails to serve a timely response
17 “(a)...waives any objection to the requests, including one based on privilege or on the
18 protection for work product under Chapter 4 (commencing with Section 2018.010).” *CCP* §
19 2033.280(a).

20 As mentioned above, the time for Defendant to serve a timely response has expired
21 and Plaintiff has received no responses to date. (Selarz Decl., ¶¶4, 6.) Unverified responses
22 are equivalent to “no response at all” and therefore do not constitute “substantial
23 compliance” with *CCP* § 2033.220. (*Allen-Pacific, Ltd. v. Superior Court*, 57 Cal. App. 4th
24 1546, 1551, 67 Cal. Rptr. 2d 804 (1st Dist. 1997) (disapproved on other grounds in *Wilcox*
25 *v. Birtwhistle*, 21 Cal. 4th 973, 983, 90 Cal. Rptr. 2d 260, 987 P.2d 727 (1999)); *See also*
26 *Appleton v. Superior Court*, 206 Cal. App. 3d 632, 636, 253 Cal. Rptr. 762 (3d Dist. 1988)).
27 No further extensions were granted beyond that noted above, and Defendant’s responses,
28 without objections, were due on [Date]. Defendant’s right to object to any of the questions

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

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

7 Although no warning or attempts at an informal resolution are required prior to
8 making a motion to deem matters admitted where no responses are received (*Demyer v.*
9 *Costa Mesa Mobile Home Estates*, 36 Cal. App. 4th 393, 395, 42 Cal. Rptr. 2d 260 (4th Dist.
10 1995) (disapproved on other grounds in, *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 90 Cal. Rptr.
11 2d 260, 987 P.2d 727 (1999)); *Leach v. Superior Court*, 111 Cal. App. 3d 902, 906, 169 Cal.
12 Rptr. 42 (3d Dist. 1980)), Plaintiff has nevertheless made a good faith attempt to resolve this
13 matter informally with opposing counsel, even unilaterally allowing for an extension to
14 provide responses. (Selarz Decl., ¶4; Exhibit "B".) Plaintiff's attempt, however, was futile,
15 necessitating the instant motion.

16 **IV. MONETARY SANCTIONS ARE MANDATORY AGAINST DEFENDANT** 17 **FOR NECESSITATING THIS MOTION**

18 "Misuses of the discovery process include, but are not limited to...(d) Failing to
19 respond or to submit to an authorized method of discovery..." *CCP* § 2023.010. "To the
20 extent authorized by the chapter governing any particular discovery method or any other
21 provision of this title, the court, after notice to any affected party, person or attorney, and
22 after opportunity for hearing may impose...sanctions against anyone engaging in conduct
23 that is a misuse of the discovery process..." *CCP* § 2023.030.

24 Regardless of whether Defendant serves responses in substantial compliance with
25 *CCP* § 2033.220 after filing of the motion but prior to hearing on the motion, the court must
26 award monetary sanctions against the responding party for necessitating the motion. (*CCP*
27 § 2033.280(c).) ("It is mandatory that the court impose a monetary sanction under Chapter
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1 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to
2 serve a timely response to requests for admission necessitated this motion.”).

3 In the present case, pursuant to *CCP* §§ 2023.010, 2023.030, and 2033.280(c),
4 monetary sanctions are properly be awarded to Plaintiff and against Defendant and Defense
5 Counsel, jointly. Plaintiff has incurred \$560.00 in costs and attorneys’ fees in connection
6 with this motion and enforcing this discovery. (Selarz Decl., ¶7.) Plaintiff submits that
7 given the attempts by Plaintiff to avoid this motion, and the lack of any responses
8 whatsoever, sanctions should properly be awarded to Plaintiff, and against Defendant and
9 Defense Counsel of record in the amount of \$560.00, as reflected in the Declaration of
10 Daniel E. Selarz, Esq.

11 **V. CONCLUSION**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order
13 establishing the truth of the matters specified in Plaintiff’s Request for Admissions, Set [#]
14 propounded on [Date]. Additionally, Plaintiff respectfully requests monetary sanctions be
15 awarded in the amount of \$560.00 against Defendant and Defense Counsel, jointly, and in
16 favor of Plaintiff, pursuant to *CCP* § 2033.280(c).

17
18
19 DATED: May 24, 2020

SELARZ LAW CORP.

21 By: _____
22 Daniel E. Selarz, Esq.
23 **Attorneys for Plaintiff(s),**
24 [Client’s Name(s)]
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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 [#],
inclusive,
14 Defendants.

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

DECLARATION OF DANIEL E. SELARZ, ESQ. AND EXHIBITS IN SUPPORT OF MOTION TO DEEM THE TRUTH OF MATTERS SPECIFIED IN REQUEST FOR ADMISSIONS, SET NO. [#] ADMITTED 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 Deem the truth of matters specified in Request for Admissions, Set No. [#] admitted 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") § 2033.280]

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 Deem the Truth of Matters
5 Specified in Request for Admissions, Set No. [#] admitted and Request for Order Awarding
6 Monetary Sanctions Against Defendant and Defense Counsel in the Sum Of \$560.00. The
7 following facts are within my personal knowledge and, if called as a witness herein, I can
8 and will competently testify thereto.

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

12 3. Defendant failed to provide responses to Plaintiff’s Request for Admissions,
13 Set [#] by the statutory deadline. *CCP* § 2033.250(a). [Thirty-day response plus five
14 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 Admissions, 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.
DANIEL E. SELARZ (State Bar No. 287555)
2 dselarz@selarzlaw.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 DEEMING THE TRUTH OF MATTERS SPECIFIED IN REQUEST FOR ADMISSIONS, SET NO. [#] ADMITTED

Filed Concurrently with Notice Of Motion And Motion To Deem The Truth Of Matters Specified In Request For Admissions, Set No. [#] Admitted 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") § 2033.280]

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 Deem The Truth
3 Of Matters Specified In Request For Admissions, Set No. [#], Admitted And Request For
4 Order Awarding Monetary Sanctions Against Defendant And Defense Counsel In The Sum
5 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 the truth of those matters specified in Plaintiff’s Requests for
10 Admissions, Set No. [#], are deemed admitted by the Defendant and are conclusively
11 established against Defendant for all purposes in this action pursuant to CCP § 2033.280(b)
12 and CCP § 2033.410.

13 IT IS FURTHER ORDERED:

- 14 3. That monetary sanctions be imposed jointly against Defendant and Defense
15 Counsel, in the sum of \$_____.
- 16 4. IT IS FURTHER ORDERED as follows: _____
17 _____
18 _____.

19 IT IS SO ORDERED.

20
21
22 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 DEEM THE TRUTH OF MATTERS SPECIFIED IN REQUEST FOR ADMISSIONS, SET NO. [#] ADMITTED 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

SELARZ LAW CORP.

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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]]