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Request for Admissions-THE MOTIONS

By Katherine Gallo

There are three motions that you can bring--(1) Motion to Compel, (2) Motion to Compel Further Responses, and (3) Motion to Have Admissions Deemed Admitted. All of them have their place in your discovery plan but two of them--Motion to Compel Further Responses and Motions to Have Matters Deemed Admitted must be in your arsenal. Though they appear to be the same motions you would use for interrogatories, inspection demands, and depositions there are a few noteworthy twists and turns.

Motion to Compel Answers

A motion to compel answers to requests for admissions in the absence of a response may seem to be a wasted motion when you have the ability to bring a motion to have matters deemed admitted. Yet, there are benefits in choosing this motion. Bringing a motion to have matters deemed admitted throws down the gauntlet in the discovery process. It is a "***gotcha***" motion. It also has legal malpractice overtones to it because someone screwed up by not getting the answers in on time and the ramifications for their client are harsh. By bringing a Motion to Compel Answers to Requests for Admissions the propounding party gets the answers they want, keeps peace during the litigation and prevents the discovery process from escalating to an all out war. However, this is a more lengthy process to get "substantially compliant" answers or evidence sanctions, so I don't recommend it.

Motion for Admissions be Deemed Admitted

This motion is quick and dirty. If you have not received responses to your Requests for Admissions, then you can file the motion. You don't have to meet and confer. There are no time limitations in bringing the motion. And, most importantly, on the day of the hearing you either have (1) your requests for Admissions Deemed Admitted or (2) "substantially compliant" responses and sanctions in your pocket. Unlike the other discovery statutes dealing with the failure to respond C.C.P. §2030.280 has teeth! It states:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> **(a)** The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under

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> Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > **(1)** The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
> > **(2)** The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

In other words, the responding party has to give you the "***substantially compliant***" responses before the hearing as well as a declaration that the attorney and the attorney needs to fall on the sword and admit that it was the result of his "***mistake, inadvertence or excusable neglect***." to defeat the motion.

> It also states:
>
> **(b)** The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> **(c)** The court shall make [an] order [that the genuineness of any documents and the trust of any matters specified in the requests be deemed admitted], unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is **MANDATORY** that the court impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion. [Emphasis added]

In essence, the statute is saying that "substantially compliant" responses served prior to the hearing defeats a motion to have matters deemed admitted, and that it is **MANDATORY** that a monetary sanction be imposed against the responding party. This is the only place in the Discovery Act that imposes **MANDATORY** sanctions. However, no sanctions can be imposed for delay in responding to Requests for Admissions if answers were provided prior to the filing of the motion.

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Remember: A "deemed admitted" order establishes by judicial fiat, that a nonresponding party has responded to the requests by admitting the truth of all matters contained there." Weil and Brown, Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2010), ¶8:1375.1 citing Wilcox v. Birtwhistle (1999) 21 C4th 973, 979

Motion to Compel Further Responses

The procedural requirements for a Motion to Compel Further Responses is the same as for the other discovery devices. However, there is one additional thing you need to be aware of – **YOU NEED TO FILE THIS MOTION IF YOU WANT COST OF PROOF SANCTIONS!** See Weil and Brown, Cal. Prac. Guide: Civil Procedure Before Trial (TRG 2010), ¶8:1378; CEB, California Civil Discovery Practice (4th ed. 2010) §9:87 and Wimberley v. Derby Cycle Corp. (1997) 56 CA4th 618, 633. You need to bring this motion if any of the following are in the responses:

- Garbage Objections
- Evasive responses
- Partial or qualified admissions
- Responding party states that they lack sufficient information to admit or deny
- Admitting part and failing to admit or deny the remainder of the request
- Denying part failing to admit or deny the remainder of the request

Another aspect to this motion is that you can't compel a party to admit even if they made the same admission in a deposition or in interrogatories. In the case of Hoguin v. Sup. Ct. (1972) 22 CA3d 812 at page 815 the Second District Court of Appeal stated "We do not see, however, how any court can force a litigant to admit any particular fact if he is willing to risk a perjury prosecution or financial sanctions"

Good luck on your motions!!

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