

REQUESTS FOR ADMISSIONS

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DEFENDANT'S REQUEST FOR ADMISSIONS

DEFENDANT'S REQUEST FOR ADMISSIONS - 1

Objectives

In this Module, students will:

- ❖ Familiarize themselves with the rules governing RFAs**
- ❖ Define Requests for Admission**
- ❖ Describe advantages and disadvantages**
- ❖ Discuss timing, limits, form**
- ❖ Describe process responding to Requests for Admission**
- ❖ Prepare Requests for Admissions**

REQUEST FOR ADMISSIONS OUTLINE

- **Objectives/purpose**
 - To settle issues before trial. Requests for Admissions (RFAs) can also be the basis to bring a motion for summary judgment.
- **Defined**
 - Procedure by which one party can require another party to admit or deny the truth of any relevant fact or the genuineness of any relevant document.
 - Written demands made to parties requesting they to admit or deny certain facts or contentions under oath.
 - Requires the answering party to admit the truth of certain facts such as, opinions, application of the law to the facts. The demand can also request a party to admit or deny the genuineness of documents such as, writings, exhibits, and other physical evidence. (CCP § 2033.010, et seq.)
 - The admission or denial must be unequivocal.
- **Advantages**
 - Considered most potent discovery tool because RFAs requires a party to either admit or deny without opportunity to provide explanations
 - RFAs are written to elicit admissions favorable to the party propounding the RFA.
 - Person can be sanctioned if their denial is proven false.
 - No limit as to the number of RFAs as to genuineness of documents.
 - If party fails to respond to RFAs, motion can be filed to deem answers admitted.
- **Disadvantages**
 - Limited as to the number of RFAs as to facts.
 - Any denial must be unequivocal.
 - Must carefully draft RFAs because limited as to number (generally 35).
 - Cannot amend, unless leave of court is granted.
- **Timing/hold period CCP § 2033.020**
 - Plaintiff can serve notice 10 days after service of summons and complaint.
 - Defendant can serve any time after service of summons and complaint or any time after the defendant has appeared in the action.
 - Cut off: 30 days before trial; 15 days before trial for motions.
- **Limits**
 - RFAs-Facts CCP § 2033.030
 - 35 RF A limit, unless:
 - Declaration of Necessity is attached showing any of the following:
 - CCP § 2033.050
 - Complexity or quantity of the issues
 - Deposition would be too expensive
 - Most expedient method

- Parties can stipulate (agree) to go beyond 35 Special Interrogatories without use of the Declaration of Necessity.
 - RFAs-Genuineness of Documents CCP § 2033.030(c)
 - No limit as to number that can be propounded.
- **Form CCP § 2033.060**
 - Can use Judicial Council form or Pleading
 - Full caption
 - Set numbers
 - Consecutive number
 - Each RFA must be separate and complete
 - No subparts
 - No compound statements/questions
 - Each statement must be written to elicit an admission or denial from the responding party.
 - Carefully drafted RFAs are drafted to elicit an admission favorable to the propounding party.
 - Can ask opinions or questions of facts or law.
- **Responding to Requests for Admissions CCP § 2033.210**
 - Response-30 Days (service by mail provides additional time)
 - Must be as "complete and straightforward as the information available to the responding party permits" (CCP 2033(f)(1))
 - Objection must state grounds such as
 - Form
 - Relevancy
 - Burdensome or oppressive
 - Vague or ambiguous
 - Must be unequivocal.
 - Must either "Admit" or "Deny" each RFA.
 - Cannot elaborate or provide explanations.
 - If you deny and know truth, you can be required to pay the other party's costs to prove the facts.
 - You can deny in part if you do not know the information or if the RFA is vague or ambiguous.
 - Response must be verified. (if not verified, considered as no response)
 - No Response
 - If no responses are given, waives all objections.
 - Opposing party must file a motion to deem matters admitted
- **Motion for protective orders CCP § 2033.080**
 - Can be filed by the responding party
 - Must meet and confer
 - Must show good cause, i.e. unwarranted annoyance, embarrassment, oppression or undue expense.
- **Motion to deem answers admitted CCP § 2033.280**

- If a motion to deem matters admitted is filed, and responses are served before motion heard, the motion may be denied but the responding party must pay other party's attorney fees and costs associated with the motion.
- **Amending responses CCP § 2033.300**
 - Cannot make changes or amendments unless leave of court is obtained. Therefore, responses must be carefully reviewed before they are verified and sent to the propounding party.
- **Motion to compel CCP § 2033.290**
 - Generally not used unless incomplete responses provided
 - Instead, Motion to Deem Answers Admitted is used by propounding party.
 - Propounding party wants all RFAs to be an admission because it can prove their causes of action or defenses asserted.
- **Motion for summary judgment**
 - Can be filed by either party.
 - RFAs can settle issues which enable a motion for summary judgment to be filed.
 - Basis for motion is to show there are no triable issues of facts (aka disputed facts). Judge and jury determine disputed facts.
 - If party is able to show there are no longer any facts in dispute, motion for summary judgment can be filed.
 - Court can either make a finding there are no disputed facts either on a particular issue or on the entire case.
- **Interrogatories**
 - Can be filed at same time with RFAs
 - Interrogatories seek to elicit detailed information. RFAs specifically seek admissions as to facts or the genuineness of documents that is favorable to the propounding party.
 - Better strategy to first propound interrogatories to assess the case and to determine the type of RFAs that should be propounded.

TABLE OF CODES OF CIVIL PROCEDURE

Chapter 16. Requests for Admission

Article 1. Requests for Admission

- CA CIV PRO Pt. 4, T. 4, Ch. 16, Art. 1, Refs & Annos
- [§ 2033](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005
- [§ 2033.010](#). Persons Subject to Admission Requests; Restrictions; Scope of Requests
- [§ 2033.020](#). Admissions Without Leave of Court; Time to Request; Earlier Requests with Leave of Court
- [§ 2033.030](#). Number of Admission Requests; Limitations; Requests Exceeding Numeric Limitation; Exception
- [§ 2033.040](#). Exemption from Numeric Limitations; Nature and Complexity of Issues; Protective Order; Burden of Proof
- [§ 2033.050](#). Admissions Exceeding Numeric Restrictions; Declaration for Additional Discovery; Form and Content
- [§ 2033.060](#). Form and Content of Request for Admissions
- [§ 2033.070](#). Service of Documents
- [§ 2033.080](#). Motion for Protective Order; Meet and Confer Declaration; Standard of Proof; Scope of Order; Monetary Sanctions

Article 2. Response to Requests for Admission

- CA CIV PRO Pt. 4, T. 4, Ch. 16, Art. 2, Refs & Annos
- [§ 2033.210](#). Written Response; Oath; Form and Contents
- [§ 2033.220](#). Scope of Response; Statement of Reasonable Inquiry into Matters Where Respondent Lacks Information or Knowledge
- [§ 2033.230](#). Partial Objection to Requested Admission; Grounds for Objection
- [§ 2033.240](#). Signatures; Oath; Employees or Agents; Responses that Contain Objections
- [§ 2033.250](#). Time to Respond
- [§ 2033.260](#). Extension of Time by Agreement; Writing; Notice to All Parties
- [§ 2033.270](#). Original Requests, Admissions and Proof of Service; Custody; Document Retention

- [§ 2033.280](#). Untimely Response; Waiver; Relief from Waiver; Motion for Court Order; Monetary Sanctions
- [§ 2033.290](#). Motion to Compel Further Response; Meet and Confer Declaration; Time to Bring Motion; Monetary Sanctions; Failure to Obey Court Order
- [§ 2033.300](#). Withdrawal of or Amendment to Admission; Authority and Discretion of Court

Article 3. Effect of Admission

- CA CIV PRO Pt. 4, T. 4, Ch. 16, Art. 3, Refs & Annos
- [§ 2033.410](#). Conclusiveness of Admission; Application to Other Proceedings
- [§ 2033.420](#). Failure to Admit Genuineness of Document or Truth of Any Matter; Binding Effect; Reasonable Expenses and Attorney's Fees
- [§ 2033.5](#). Repealed by Stats.2004, C. 182 (A.B.3081), § 22, Operative July 1, 2005

Requests for Admissions SECTION 2033.010-2033.080:

2033.010 Persons subject to admission requests; restrictions; scope of requests.

Any party may obtain discovery within the scope delimited by Chapters 2 (commencing with Section 2017.010) and 3 (commencing with Section 2017.710), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), by a **written request** that any other party to the action admit the genuineness of specified documents, or the truth of specified matters of **fact, opinion relating to fact, or application of law to fact**. A request for admission may relate to a **matter that is in controversy** between the parties.

✓ Code Analysis:

- o What is a request for admission? Request for admission is a procedure by which one party can require another party to admit or deny the truth of any relevant fact, opinion relating to fact or application of law to fact or the genuineness of any relevant document.
- o Written demands made to the other party requesting they admit or deny certain facts or contentions under oath.
- o Who is subject to admission requests? Any party to the action
- o PURPOSE/LEGISLATIVE INTENT
 - Primary purpose is to expedite trial
 - Purpose is not uncovering information but eliminating need for proof
 - establish the truth of specified facts
 - admit a legal conclusion
 - determine a party's opinion relating to a fact,
 - settle a matter in controversy, and
 - admit the genuineness of documents.

2033.020 Admissions without leave of court; time to request; earlier requests with leave of court

(a) A **defendant** may make requests for admission by a party **without leave** of court at **any time**.

(b) A **plaintiff** may make requests for admission by a party without leave of court at any time that is **10 days after the service** of the summons on, or appearance by, **that party**, whichever occurs first.

(c) Notwithstanding subdivision (b), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, a plaintiff may make requests for admission by a party without leave of court at any time that is five days after service of the summons on, or appearance by, that party, whichever occurs first.

(d) Notwithstanding subdivisions (b) and (c), on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make requests for admission at an earlier time.

✓ Code Analysis:

- o (a) Defendant can serve at any time without leave of court.
 - “Leave of court”: permission obtained by the court which, without such permission it would have been unlawful to do.
- o (b) Plaintiff can serve without leave of court 10 days after the service of the summons or after the appearance, whichever comes first.
- o (c) In an event of an unlawful detainer, a plaintiff may request admission by a party without leave of court at any time after 5 days of service of summons or after appearance, whichever comes first.
- o (d) The court, with or without notice, may grant leave to a plaintiff to make requests for admission at an earlier time for good cause shown.

2033.030 Number of admission requests; limitations; requests exceeding numeric limitation; exception

(a) **No party shall request**, as a matter of right, that any other party **admit more than 35 matters** that do not relate to the genuineness of documents. If the initial set of admission requests does not exhaust this limit, the balance may be requested in subsequent sets.

(b) **Unless a declaration** as described in Section 2033.050 has been made, **a party need only respond to the first 35 admission** requests served that do not relate to the genuineness of documents, if that party states an objection to the balance under Section 2033.230 on the ground that the limit has been exceeded.

(c) The number **of requests for admission** of the **genuineness** of documents **is not limited** except as justice requires to protect the responding party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense.

✓ Code Analysis:

(a) No party will request that the other party (respond by admitting or denying) to more than 35 matters that do not relate to the integrity (realness) of the documents. If the Initial set of admissions request (statements, facts, opinions, questions) do not meet the limit of 35 interrogatories, the remaining (statements, facts, opinions, questions) can be requested in following sets.

(b) The party only has to respond to the first 35 admissions requests unless a declaration has been made under section 2033.050.

(c) requests for admission in relation to the realness(truthfulness) is not limited with the exception being to protect the responding party from unjustified annoyance, embarrassment etc.

2033.040. Exemption from Numeric Limitations; Nature and Complexity of Issues; Protective Order; Burden of Proof

(a) Subject to the right of the responding party to seek a protective order under Section 2033.080, any party who attaches a supporting declaration as described in Section 2033.050 may request a greater number of admissions by another party if the greater

number is warranted by the complexity or the quantity of the existing and potential issues in the particular case.

(b) If the responding party seeks a protective order on the ground that the number of requests for admission is unwarranted, the propounding party shall have the burden of justifying the number of requests for admission.

✓ Code Analysis:

- o (a) A party can request more admissions if the issue or case is complex or the case has a need for it. The asking party must fill out and include a declaration per Section 2033.050. The other party has the right to seek a protective order against such action.
- o (b) If the responding party files a protective order, the asking party has the burden of proof (has to prove) that there is justified reason for the additional requests.

2033.050. Admissions Exceeding Numeric Restrictions; Declaration for Additional Discovery; Form and Content

Any party who is requesting or who has already requested **more than 35** admissions **not relating** to the **genuineness** of documents by any other party **shall attach** to each set of requests for admissions a **declaration** containing substantially the following words:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for _____, a party to this action or proceeding).

2. I am propounding to _____ the attached set of requests for admission.

3. This set of requests for admission will cause the total number of requests propounded to the party to whom they are directed to exceed the number of requests permitted by Section 2033.030 of the Code of Civil Procedure.

4. I have previously propounded a total of _____ requests for admission to this party.

5. This set of requests for admission contains a total of _____ requests.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in this case.

7. I have personally examined each of the requests in this set of requests for admission.

8. This number of requests for admission is warranted under Section 2033.040 of the Code of Civil Procedure because _____. (Here state the reasons why the complexity or the quantity of issues in the instant lawsuit warrant this number of requests for admission.)

9. None of the requests in this set of requests is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on _____.

(Signature)
Attorney for _____

2033.060. Form and Content of Request for Admissions

(a) A party requesting admissions shall **number each set of requests consecutively**.

(b) In the first paragraph immediately below the title of the case, there shall appear the **identity of the party requesting** the admissions, the **set number**, and the **identity of the responding party**.

(c) **Each** request for admission in a set shall be **separately set forth** and identified by letter or number.

(d) Each request for admission shall be **full and complete** in and of itself. No preface or instruction shall be included with a set of admission requests unless it has been approved under Chapter 17 (commencing with Section 2033.710).

(e) Any term specially defined in a request for admission shall be typed with all letters capitalized whenever the term appears.

(f) **No** request for admission **shall contain subparts, or a compound**, conjunctive, or disjunctive request unless it has been approved under Chapter 17 (commencing with Section 2033.710).

(g) A party requesting an admission of the genuineness of any documents **shall attach copies of those documents to the requests**, and shall make the original of those documents **available for inspection** on demand by the party to whom the requests for admission are directed.

(h) No party shall combine in a single document requests for admission with any other method of discovery.

✓ Code Analysis:

- o Number each sets of requests consecutively.
- o Below the title of the case, identify of the party requesting the admissions, the set number, and the identity of the responding party.
 - **Example:** "PLAINTIFF JOHN SMITH'S SECOND SET OF REQUESTS FOR ADMISSIONS TO DEFENDANT HARRY BROWN"
- o Each request for admission must be separated and identified by letter or number.
- o Each request for admission must be full and complete on its own. No preface or instruction can be included unless it has been approved under Chapter 17 (commencing with Section 2033.710).
- o Any term with a special definition must be typed in CAPITAL LETTERS whenever the term appears.
- o A request for admissions cannot contain subparts or compounds (When more than one question is combined in what seems to be a single

question) unless it has been approved under Chapter 17 (commencing with Section 2033.710).

2033.070. Service of Documents

The party requesting admissions shall serve a copy of them on the party to whom they are directed and on all other parties who have appeared in the action.

✓ **Code Analysis:**

- The party requesting the admissions must serve the responding party(s).
- Copies of the RFAs must be served on the party to whom directed and all other parties who have appeared in the action

2033.080. Motion for Protective Order; Meet and Confer Declaration; Standard of Proof; Scope of Order; Monetary Sanctions

(a) When requests for admission have been made, the **responding party may promptly move for a protective order**. This motion shall be accompanied by a **meet and confer** declaration under Section 2016.040.

(b) The **court**, for good cause shown, **may make any order that justice requires to protect any party from unwarranted annoyance, embarrassment, oppression, or undue burden and expense**. This protective order **may include, but is not limited to**, one or more of the following directions:

- (1) That the **set of admission requests, or particular requests in the set, need not be answered at all**.
- (2) That, contrary to the representations made in a declaration submitted under Section 2033.050, **the number of admission requests is unwarranted**.
- (3) That **the time** specified in Section 2033.250 to **respond to the set of admission requests, or to particular requests in the set, be extended**.
- (4) That a **trade secret or other confidential research, development, or commercial information not be admitted or be admitted only in a certain way**.
- (5) **That some or all of the answers to requests for admission be sealed and thereafter opened only on order of the court**.

(c) If the **motion for a protective order is denied** in whole or in part, the court may order that the **responding party provide or permit the discovery against which protection was sought on terms and conditions that are just**.

(d) The court shall **impose a monetary sanction under Chapter 7** (commencing with Section 2023.010) against any party, person, or attorney **who unsuccessfully makes or opposes a motion for a protective order under this section**, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

✓ **Code Analysis:**

Protective Orders: Instead of responding, the party to whom RFAs have been directed may promptly move for a protective order.

(b) For “good cause” shown, the court may make whatever order justice requires to protect a party against “unwarranted annoyance, embarrassment, oppression or *undue burden and expense*.”

Burden of proof on motion: As with motions generally, the burden is on the party seeking relief (moving party). Competent evidence showing “good cause” for the relief sought is required.

Relief available: For “good cause shown,” the court may make whatever order justice requires, including:

- *Excusing* answers to any or all requests;
- Finding the number of RFAs (not relating to genuineness of documents) “unwarranted” despite representations made in the “declaration of necessity” (thus excusing any duty to answer some or all of the excess number served);
- *Extending time* for answering the requests;
- Excusing admission of *confidential information* (trade secrets, etc.) or providing it shall be admitted only in a certain way;
- Ordering that some or all of the answers be sealed and thereafter opened only on court order.

Monetary sanction against losing party: The court “shall” impose a *monetary sanction* against the losing party on the motion for protective order, *unless* it finds that party made or opposed the motion “with substantial justification” or other circumstances render sanctions “unjust.”

SECTION 2033.210-2033.300

2033.210. Written response; oath; form and contents

(a) **The party to whom requests for admission have been directed shall respond in writing under oath separately to each request.**

(b) Each response shall **answer the substance of the requested admission**, or set forth an **objection to the particular request**.

(c) In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the requesting party.

(d) **Each answer or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding request, but the text of the particular request need not be repeated.**

✓ **Code Analysis:**

Unless excused by protective order (above), the party to whom RFAs are directed is under a duty to respond thereto. The responses must be:

- Timely
- In the proper format; and
- Under oath

Format of response

Opening paragraph: The first paragraph immediately below the title of the case must show:

- The identity of the responding party;
- The identity of the propounding party; and
- The set number of the party's requests being responded to; and

2033.220. Scope of response; statement of reasonable inquiry into matters where respondent lacks information or knowledge

(a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits.

(b) Each answer shall:

(1) **Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party.**

(2) **Deny so much of the matter involved in the request as is untrue.**

(3) **Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge.**

(c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter.

✓ Code Analysis:

(a) Each answer must be complete and straightforward

(b) Each answer must:

1. Admit

2. Deny

3. Specifically state which part if any of the statement is true

(c) A statement *claiming inability* to admit or deny

2033.230. Partial objection to requested admission; grounds for objection

(a) **If only a part of a request for admission is objectionable, the remainder of the request shall be answered.**

(b) If **an objection** is made to a request or to a part of a request, the **specific ground** for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the matter as to which an admission is requested is protected work product under Chapter 4 (commencing with Section 2018.010), that claim shall be expressly asserted.

✓ Code Analysis:

(a) if only part of the request is objectionable, the remainder of the request must be answered.

(b) If an objection is made, the specific reason for the objection must be set forth in the response.

2033.240. Signatures; oath; employees or agents; responses that contain objections

(a) The party to whom the requests for admission are directed shall **sign the response under oath**, unless the response contains only objections.

(b) If that party is a public or private corporation, or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product under Chapter 4 (commencing with Section 2018.010) during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response.

(c) The attorney for the responding party shall sign any response that contains an objection.

✓ **Code Analysis:**

The party or its officer or agent to whom the RFAs were directed must sign the response under oath. The responding party must also sign a response that contains an objection. If the response consists *entirely* of objections, then only the attorney's signature is necessary.

2033.250. Time to respond

(a) Within **30 days after service** of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

(b) Notwithstanding subdivision (a), in an unlawful detainer action or other proceeding under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3, the party to whom the request is directed shall have at least five days from the date of service to respond, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response.

✓ **Code Analysis:**

The responses are due within *30 days* from the date the RFAs were served (extended for service by mail, overnight delivery or fax or electronically per. Exception: In *unlawful detainer* actions, responses are due within *5 days* after service (unless the time is extended or shortened by court order)

If the last day falls on a weekend or holiday, the time limit is extended to the next court day closer to the trial date.

Court may extend or shorten time: The court has power to extend the time for response, on motion of the party to whom the RFAs are directed. (It also has power to shorten the period, on motion of the requesting party; but this is rarely done.)

2033.260. Extension of time by agreement; writing; notice to all parties

(a) The party requesting admissions and the responding **party may agree to extend the time for service of a response** to a set of admission requests, or to particular requests in a set, to a date beyond that provided in Section 2033.250.

(b) This agreement may be **informal, but it shall be confirmed in a writing** that specifies the extended date for service of a response.

(c) Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any request for admission to which the agreement applies in any manner specified in Sections 2033.210, 2033.220, and 2033.230.

(d) Notice of this agreement shall be given by the responding party to all other parties who were served with a copy of the request.

✓ Code Analysis:

The propounding and responding parties may agree to extend the time for responses to some or all of the RFAs served. Where this occurs, it is the responding party's obligation to notify all other parties to the action accordingly. The agreement (stipulation) must be in writing and must specify the extended date. Unless it expressly provides *otherwise*, a stipulation extending time to “respond” reserves the right to object to any request.

2033.270. Original requests, admissions and proof of service; custody; document retention

(a) The requests for admission and the response to them shall **not be filed with the court**.

(b) The party requesting admissions shall retain both the original of the requests for admission, with the original proof of service affixed to them, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

✓ Code Analysis:

Custody of originals: The requesting party ends up with the originals of both the requests and responses, and must retain same until 6 months after final disposition of the action. They are not filed with the court.

2033.280. Untimely response; waiver; relief from waiver; motion for court order; monetary sanctions

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 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.

(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 2033.010).

(c) The court shall make this order, 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 2033.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

✓ **Code Analysis:**

(a) **(a) All objections waived:** Failure to timely respond to RFAs results in *waiver of all objections* to the requests—including claims of privilege or work product protection.

The party in default may move for relief from waiver before the court orders the matters specified in the RFAs “deemed admitted. Such relief may be granted if the court finds:

- The party's failure to serve a timely response resulted from “mistake, inadvertence or excusable neglect”; and
- The party has *subsequently served a response* in “substantial compliance” with § 2033.220

Monetary sanction also mandatory: Although delayed responses may defeat a motion to compel, they will not avoid monetary sanctions. Regardless of the reason for the delay in responding, it is *mandatory* that a monetary sanction be imposed on the party or attorney, or both, whose failure to serve a timely response necessitated the filing of the deemed-admitted motion.

2033.290. Motion to compel further response; meet and confer declaration; time to bring motion; monetary sanctions; failure to obey court order

(a) On **receipt of a response** to requests for admissions, the party requesting admissions may move for **an order compelling a further response** if that party deems that either or both of the following apply:

(1) An answer to a particular request is evasive or incomplete.

(2) An objection to a particular request is without merit or too general.

(b) A motion under subdivision (a) shall be accompanied by a **meet and confer declaration** under Section 2016.040.

(c) Unless notice of this motion is given **within 45 days** of the service of the verified response, or any supplemental verified response, or any specific later date to which the

requesting party and the responding party have agreed in writing, the requesting party **waives any right to compel further response** to the requests for admission.

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to requests for admission, the court may order that the matters involved in the requests be deemed admitted. In lieu of, or in addition to this order, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

✓ Code Analysis:

Motion to Compel Further Answers: Where responses have been timely filed but are deemed deficient by the requesting party (e.g., because of objections or evasive responses), that party may move for an order compelling a further response.

45-day time limit: The motion must be made within 45 days after service of verified responses in question, or any verified supplemental responses (longer if responses served by mail, overnight delivery or fax or electronically) Otherwise, the right to compel further responses is waived.

Meet and Confer: Some courts have procedures in place for an informal conference in court to resolve discovery disputes. The *Los Angeles Superior Court* has formalized this opportunity by way of a “Discovery Resolution Stipulation” procedure; if the stipulation is signed by the parties and the court accepts it, they must request an informal discovery conference *before filing any discovery motion*.

2033.300. Withdrawal of or amendment to admission; authority and discretion of court

(a) **A party may withdraw or amend an admission made in response to a request for admission only on leave of court granted after notice to all parties.**

(b) The court may permit withdrawal or amendment of an admission only if it determines that the admission was the result of mistake, inadvertence, or excusable neglect, and that the party who obtained the admission will not be substantially prejudiced in maintaining that party's action or defense on the merits.

(c) The court may impose conditions on the granting of the motion that are just, including, but not limited to, the following:

(1) An order that the party who obtained the admission be permitted to pursue additional discovery related to the matter involved in the withdrawn or amended admission.

(2) An order that the costs of any additional discovery be borne in whole or in part by the party withdrawing or amending the admission.

✓ Code Analysis

Amending or Withdrawing Admissions: An admission cannot be amended or withdrawn except by leave of court after noticed motion.

A party will be permitted to withdraw or amend an admission only if the court finds:

- The admission resulted from “*mistake, inadvertence or excusable neglect*” (e.g., new facts discovered contradicting earlier admission); *and*
- *No substantial prejudice* to the requesting party will result from allowing the admission to be withdrawn or amended.

Relief may be granted conditionally: If relief is granted, the court may impose whatever *conditions* are just: e.g., reopening discovery on the matter involved; and ordering the party whose admission is involved to pay the other's costs in conducting additional discovery.

2033.410. Conclusiveness of admission; application to other proceedings

(a) **Any matter admitted in response to a request for admission is conclusively established** against the party making the admission in the pending action, unless the court has permitted withdrawal or amendment of that admission under Section 2033.300.

(b) Notwithstanding subdivision (a), any admission made by a party under this section is binding only on that party and is made for the purpose of the pending action only. It is not an admission by that party for any other purpose, and it shall not be used in any manner against that party in any other proceeding.

✓ Code Analysis:

(a) any matter admitted in response to a request for admission is irrefutably established unless the court has permitted a withdrawal or amendment.

(b) Any admission made is binding only on that party who has made the admission for the purpose of the pending action only and not for any other purpose and it will not be used in any other matter against the admitting party.

2033.420. Failure to admit genuineness of document or truth of any matter; binding effect; reasonable expenses and attorney's fees

(a) **If a party fails to admit** the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter **proves the genuineness of that document** or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to **pay the reasonable expenses incurred in making that proof**, including reasonable attorney's fees.

(b) The court shall make this order unless it finds any of the following:

(1) An objection to the request was sustained or a response to it was waived under Section 2033.290.

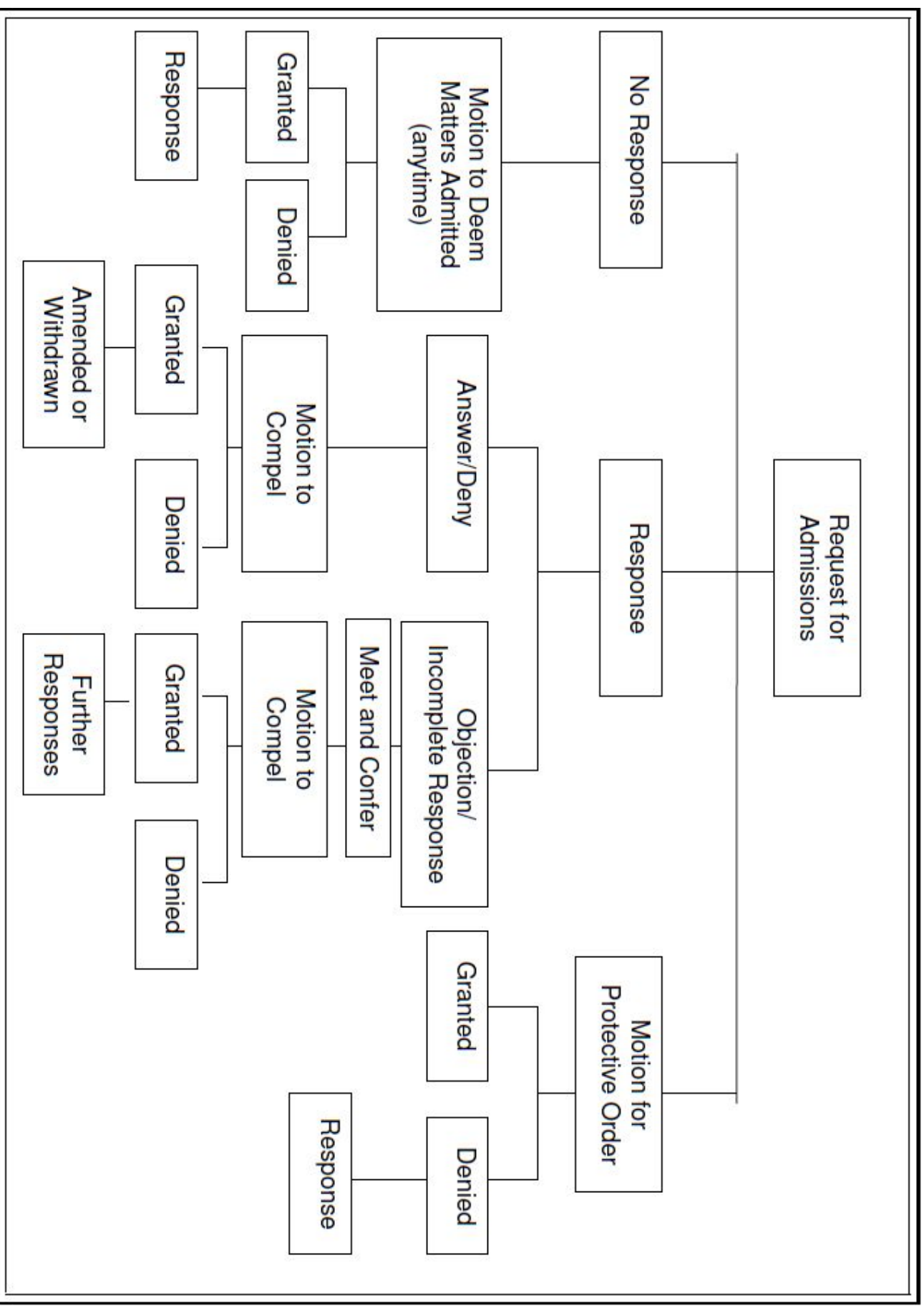
(2) The admission sought was of no substantial importance.

(3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.

(4) There were other good reasons for the failure to admit.

✓ Code Analysis:

- (a) if a party fails to admit the genuineness of a document , and if the party requesting and admission proves the genuineness of the document the party requesting the admission can move the court for an order requiring the party to pay reasonable expenses incurred in making that proof including reasonable attorneys fees.
- (b) The court must make the order unless it finds:
1. An objection was sustained or response was waived
 2. Admission sought was of no substantial importance
 3. The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.
 4. There were other good reasons for the failure to admit.



REQUESTS FOR ADMISSIONS (RFA) REVIEW QUESTIONS

- What is a request for admission?
- What are the advantages of requests for admissions?
- What are the disadvantages of requests for admissions?
- On whom may you serve requests for admissions?
- When can a plaintiff serve requests for admissions on the defendant?
- When can the defendant serve requests for admissions on the plaintiff?
- When are responses due?
- What if the requests for admissions were served by mail?
- Is there a limit to the number of requests for admissions?
- Can requests for admissions have subparts?
- Can requests for admissions ask for an opinion?
- How must RFAs be answered?
- Can Requests for admissions be amended?
- What is the focus of the propounding party when drafting requests for admissions?
- What should the propounding party file if no responses are served?
- What is a motion for summary judgment?
- How does a motion for summary judgment relate to requests for admissions?

SAMPLES

Request for Admission Form

DISC-020

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FOR COURT USE ONLY CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
SHORT TITLE:		
REQUESTS FOR ADMISSION <input type="checkbox"/> Truth of Facts <input type="checkbox"/> Genuineness of Documents Requesting Party: Answering Party: Set No.:		

INSTRUCTIONS

Requests for admission are written requests by a party to an action requiring that any other party to the action either admit or deny, under oath, the truth of certain facts or the genuineness of certain documents. For information on timing, the number of admissions a party may request from any other party, service of requests and responses, restrictions on the style, format, and scope of requests for admission and responses to requests, and other details, see Code of Civil Procedure sections 94-95, 1013, and 2033.010-2033.420 and the case law relating to those sections.

An answering party should consider carefully whether to admit or deny the truth of facts or the genuineness of documents. With limited exceptions, an answering party will not be allowed to change an answer to a request for admission. There may be penalties if an answering party fails to admit the truth of any fact or the genuineness of any document when requested to do so and the requesting party later proves that the fact is true or that the document is genuine. These penalties may include, among other things, payment of the requesting party's attorney's fees incurred in making that proof.

Unless there is an agreement or a court order providing otherwise, the answering party must respond in writing to requests for admission within 30 days after they are served, or within 5 days after service in an unlawful detainer action. There may be significant penalties if an answering party fails to provide a timely written response to each request for admission. These penalties may include, among other things, an order that the facts in issue are deemed true or that the documents in issue are deemed genuine for purposes of the case.

Answers to *Requests for Admission* must be given under oath. The answering party should use the following language at the end of the responses:

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

(DATE)

(SIGNATURE)

These instructions are only a summary and are not intended to provide complete information about requests for admission. This *Requests for Admission* form does not change existing law relating to requests for admissions, nor does it affect an answering party's right to assert any privilege or to make any objection.

REQUESTS FOR ADMISSION

You are requested to admit within 30 days after service, or within 5 days after service in an unlawful detainer action, of this *Requests for Admission* that:

- ☐ Each of the following facts is true (*if more than one, number each fact consecutively*):

☐ Continued on Attachment 1
- ☐ The original of each of the following documents, copies of which are attached, is genuine (*if more than one, number each document consecutively*):

☐ Continued on Attachment 2

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Page 1 of 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF *[NAME OF COUNTY]*

Case No. *[number]*

[Name(s) of plaintiff(s)],

Plaintiff(s)

APPLICATION FOR ORDER

WAIVING NOTICE AND ALLOWING

REQUEST FOR ADMISSIONS

vs.

[Name(s) of defendant(s)],

Defendant(s)

I, *[name of attorney]*, Attorney for *[name of plaintiff]* in the above-entitled action, declare and say:

1. The action was filed on *[date of filing action]* and summons served upon the Defendant *[name of defendant]* on *[date of serving summons]*. The action is an action for *[description of action]* and in connection therewith it is necessary that *[name of defendant]* advise *[name of plaintiff]* whether or not *[he/she]* will admit to the genuineness of certain documents and the truth of certain matters, all of which are set forth in the Request for Admissions, a copy of which is attached hereto and made a part hereof by reference.

2. Unless waived by this court, Code of Civil Procedure § 2033.020 requires that ten days elapse from the date of service of summons before such a Request for Admissions may be served. It is necessary that the Request for Admissions be served forthwith and within the ten-day period, for the reasons that *[list of reasons]*.

Wherefore, an order of this court is requested waiving the ten-day period and notice of this application for an order shortening the time for service of such request, which is based upon Section 2033.020 of the Code of Civil Procedure.

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

Dated: *[date]*

[Name of attorney]

Attorney for Plaintiff

[Points and authorities]

ORDER

Good cause appearing therefore, by the application of *[name of plaintiff]*,

It is hereby ordered that notice of the foregoing application shall be waived and it is further ordered that the Request for Admissions from *[name of plaintiff]* to *[name of defendant]* may be served forthwith.

Dated: *[date]*

[Name of judge]

[Title of judge]

§ 2033.020 Form 2. Evidence—Discovery—Ex parte application to serve request for admissions within ten days
after service of summons—Order

ORANGE, CA, 92701
714-555-1122
Defendant, In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

FLOWERS, INC.)	Case No.: 31-2014-00001988
Plaintiff,)	
vs.)	DEFENDANT SAM SAMPLE'S
SAM SAMPLE)	RESPONSE TO REQUEST FOR
Defendant)	ADMISSIONS
)	SET NO. ONE (1)
)	
)	
)	
)	

PROPOUNDING PARTY:	FLOWERS, INC.
RESPONDING PARTY:	SAM SAMPLE
SET NUMBER:	ONE (1)

Responding Party hereby answers Propounding Party's Request for Admissions as follows:

RESPONSE TO REQUEST No. 1:

Admit.

RESPONSE TO REQUEST No. 2:

Deny.

RESPONSE TO REQUEST No. 3:

Responding party objects to this request on the ground that [*state ground for objection, e.g., it is improper form and is ambiguous.*]

RESPONSE TO REQUEST No. 4:

After making a reasonable inquiry to obtain information concerning the matter stated in the request, the information known or readily obtainable is insufficient to enable responding party to admit or deny this request.

RESPONSE TO REQUEST No. 5:

Denied except as to [state part of request that is admitted, e.g. *date complaint was filed.*]

RESPONSE TO REQUEST No. 6: [continue with responses in sequence]

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

Signed at [city,] , California on [date], 200_

[Name of Declarant]

RESPONDING TO REQUESTS FOR ADMISSIONS

A. There are three (3) basis responses for requests for admissions:

1) *Admit.* With this answer, you are indicating that the fact is true. If part of a statement is true, you must admit that portion of the statement. Once you admit a fact, it will be considered true throughout the entirety of the case. These facts can only be overturned by filing a complicated motion with the court.

2) *Deny.* With this answer, you are indicating that the fact is not true. This may mean that the entire statement is untrue, or that portions are untrue. If the statement is partially true, you must admit the true part(s) of the fact and deny the false part(s) of the fact ([CCP § 2033.220\(b\)\(1\) & \(2\)](#)). For example, if the propounding party asks, “Admit that the accident you were involved in on May 4, 2013, was caused by your negligence,” you could admit that you were involved in an accident on that date, but deny that it was caused by your negligence.

If you deny the truthfulness of a fact, the other party will need to prove that fact at trial. DO NOT deny all the requests just to make the other party prove every fact. If you are found to have improperly denied a request, the court may order you to pay all attorney’s fees and costs incurred by the other party to prove the fact at trial ([CCP § 2033.420\(a\)](#)). Additionally, if you purposely deny a fact you know to be true, you are committing perjury and opening yourself to possible criminal charges!

3) *Cannot truthfully admit or deny the matters set forth in this request because he does not have knowledge of these matters, and despite reasonable inquiry into the matter by reviewing all of the records and information available to him, to obtain information from which the truth or falsity of the matter might be learned.* This is a legalese way of stating that you do not know if the fact is true, and that after carefully reviewing all the evidence available to you, you cannot determine if the fact is true or false. You are required to perform a reasonable investigation of the evidence available to you before making this response ([CCP § 2033.220\(c\)](#)). If you do not, the requesting party may file a motion to have the facts deemed admitted by the court, or a motion to compel further responses, both of which may carry sanctions (monetary penalties) against you. If your failure to investigate results in the fact needing to be proven at trial, the court may order you to pay all attorney’s fees and costs incurred by the other party to prove the fact at trial ([CCP § 2033.420\(a\)](#)).

B. Keep your RFAs *as simple as possible* so there is no room for denial. This will avoid objections on the ground of “compound and conjunctive” (It may run up the *number* of RFAs you need to serve, but you can use a “declaration of necessity” for more than 35 requests if need be.)

For example, *instead* of asking:

“You are requested to admit that ...

“5. Defendant Mary Smith was driving an automobile registered to defendant John Jones in the course and scope of her employment by John Jones at the time of the accident” ...

Ask the following *separate* RFAs:

“You are requested to admit that ...

“6. Defendant Mary Smith was operating a ... (year) Buick, California License No. 3B77024, at the time and place of the accident described in the complaint.

“7. The said automobile was registered at the time of the said accident to defendant John Jones.

“8. Defendant Mary Smith was an employee of defendant John Jones at the time of the said accident.

“9. Defendant Mary Smith was performing acts within the course and scope of her employment by Jones at the time and place of said accident.”