



**Katherine Gallo, Esq.**  
**Discovery Referee, Special Master, and Mediator**  
**1-650-571-1011**

## **The Discovery Motion with Teeth**

**By Katherine Gallo**

After a long stretch of depositions, coupled with intense mediation sessions you finally have a day in the office to clean off your desk and catch up on your other cases. Going through the stacks of mail, you unfortunately find the **Discovery Motion with Teeth–Motion to Have Admissions be Deemed Admitted**. Panic sets in. Now what do you do?

The first thing you do is **pick up the phone** and call opposing counsel and **beg for relief**. You don't have any bargaining room at this point. Explain to him/her that your failure to serve verified responses to their requests for admissions was because of your "*mistake, inadvertence, or excusable neglect*" and that you will provide "*substantially compliant*" responses without objection (since you already have waived your objections) no later than a date certain. Even offer to pay some money to have the motion be taken off calendar. In order to defeat this motion you not only are going to have to provide "*substantially compliant*" responses to the court's satisfaction and you are going to be paying monies as **sanctions are mandatory**. This doesn't even include the fees you are going to incur in opposing the motion. So it is in your best interests to resolve the situation before it is heard by the court.

If opposing counsel refuses to take the motion off calendar, then you must respond to the motion by:

1. Serving a verified response that is in "*substantial compliance*" with C.C.P §§ 2033.220 and 2033.230 before the hearing on the motion; and
2. Provide a declaration to the court stating you have provided "*substantially compliant*" responses and that your failure to timely respond was due to "*mistake, inadvertence, or excusable neglect*" See C.C.P. §2030.280(a)(1),(2). In order to defeat this motion you need a strong declaration. Your declaration should contain:
  - Date when the "*substantially compliant*" responses were served.
  - Details of the "*mistake, inadvertence, or excusable neglect*" that caused your failure to not timely respond.
  - All your meet and confer discussions with opposing counsel including your offer to pay monies.

**969G Edgewater Blvd., Suite 345 Foster City, CA 94404**  
**phone: (650)571-1011 fax: (650)571-0793 [klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)**



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If you do the above, the Motion to have Admissions be Deemed Admitted should be defeated as most judges would rather have the case decided on the merits. However, you will be sanctioned, but the question is how much. If you “**fell on the sword**” and admitted your “*mistake, inadvertence, or excusable neglect*” and you tried to meet in good faith to resolve the situation; the sanctions shouldn't be too ugly.

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