

[REDACTED]

Jeffrey Karpel  
Attorney at Law  
Law Offices of Jeffrey E. Karpel  
4515 Sherman Oaks Avenue  
Sherman Oaks, California 91403

Re: *United Services [REDACTED] Insurance v. Kelly Client*  
Stipulation and Response to Plaintiff's Request for Admissions Set One

Dear Mr. Karpel,

I have been retained by Kelly Client to represent her in the above-entitled action. Please direct any and all further communication related to this matter to this office. I have enclosed a substitution of attorney.

Enclosed is Ms. Client's Response to the Plaintiff's Request for Admissions Set One. I understand that these are untimely; however, I was just retained this week, and Ms. Client was unaware of her duty to respond in a timely manner.

I would appreciate if you would be willing to stipulate to set aside the order that deemed the admissions admitted. For your convenience, we have provided an original Stipulation. Please sign the stipulation where indicated and I will file it with the court. I feel this would be in the best interest of both parties. If your client is willing to stipulate, please let me know within seven (7) days of this letter. If you have any questions or concerns, please contact me at (714) 571-5227.

Sincerely,

William T. Tanner  
Supervising Attorney

EMH/erh

Enc.: Response to Plaintiff's Request for Admissions  
Substitution of Attorney  
Stipulation

1 LEGAL AID SOCIETY OF ORANGE COUNTY  
By: William T. Tanner  
2 SBN 173453  
3 901 N. Main Street  
Santa Ana, California 92701

4 Attorney for the Defendant, Kelly Client

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE

HARBOR JUSTICE CENTER -LAGUNA HILLS FACILITY

[REDACTED] E )  
ASSOCIATION, )  
Plaintiff, )  
vs. )  
ROBERT [REDACTED], KELLY CLIENT; and )  
DOES 1 to 30, inclusive, )  
Defendants )

Case No.: 0 [REDACTED]  
Honorable Lyle Robertson  
Department S09  
**STIPULATION TO WITHDRAW ADMISSIONS  
DEEMED ADMITTED**  
Complaint Filed: [REDACTED]  
Trial Date: Not Set

THE PARTIES HEREBY STIPULATE AND AGREE that:

1. The order for the matter heard on September 4, 2003 deeming the admissions admitted is  
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1 hereby set aside and the deemed admissions are withdrawn.

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William T. Tanner                                  Dated  
Attorney for Defendant Kelly Client


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Jeffrey E. Karpel                                  Dated  
Attorney for Plaintiff

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Kelly Client    Dated  
Defendant

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                                  Dated  
Association, Plaintiff

**IT IS SO ORDERED**

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Date

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Commissioner Lyle Robertson  
Superior Court of California

1 [REDACTED]  
2 [REDACTED]  
3 714 [REDACTED]

4 Defendant in Pro Per  
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF RIVERSIDE DESSERT BRANCH  
9 LARSON JUSTICE CENTER  
10

11 MICHAEL [REDACTED]  
12 Plaintiff,

13 vs.

14 JOHN [REDACTED] AND SUE M [REDACTED]  
15 Defendants  
16

) Case No.:

) **RESPONSE TO PLAINTIFF'S  
REQUEST FOR ADMISSIONS,  
SET ONE**  
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19 RESPONSE BY: JOHN [REDACTED] REQUESTS FOR ADMISSION.

20 PROPOUNDED BY: MICHAEL [REDACTED] SET NUMBER ONE.

21 Response to Request No. 1:

22 Admitted.

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24 Response to Request No. 2:

25 Admitted.

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27 Response to Request No. 3:

28 Denied.

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Response to Request No. 4:

Denied.

Response to Request No. 5:

Denied.

Response to Request No. 6:

Denied.

Response to Request No. 7:

Denied.

Response to Request No. 8:

Denied.

Response to Request No. 9:

Denied.

Response to Request No. 10:

Denied.

Response to Request No. 11:

Denied, as there is no contract.

Response to Request No. 12:

Denied, as there is no contract.

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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: [REDACTED]

[REDACTED] Defendant

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

Dated: [REDACTED]

[REDACTED] Defendant

① TEL BACKGROUND

1 LEGAL AID SOCIETY OF ORANGE COUNTY  
By: William T. Tanner  
2 SBN 173453  
902 N. Main Street  
3 Santa Ana, California 92701

4 Attorney for the Defendant Defendant  
5  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10 HARBOR JUSTICE CENTER -LAGUNA HILLS FACILITY

11 PLAINTIFF ASSOCIATION,

12 Plaintiff,

13 vs.

14 DEFENDANT; DEFENDANT; and DOES 1

15 to 30, inclusive,

16 Defendants

) Case No.: 02SL

) NOTICE OF MOTION AND  
) MOTION TO WITHDRAW  
) DEEMED ADMISSIONS

) HEARING DATE/TIME:

) DEPT. NO.: S09

) JUDGE: Hon. Michael McCartin

) DATE ACTION FILED: 12/03/02

) [MEMORANDUM OF POINTS AND  
) AUTHORITIES FOR MOTION TO  
) WITHDRAW DEEMED ADMISSIONS,  
) and DECLARATION OF DEFENDANT  
) DEFENDANT, FILED CURRENTLY  
) HEREWITHIN]

21 TO: PLAINTIFF AND ITS ATTORNEY OF RECORD

22 PLEASE TAKE NOTICE THAT: On Saturday, November 21, 2003 at 9:30AM, before  
23 the above-entitled Court in Department No. S09, located at 23141 Moulton Pkwy, Fl 2, Laguna  
24 Hills, CA 92653, before Honorable Lyle Robertson, Defendant Defendant, through her attorney  
25 of record herein, will and hereby does move the Court to withdraw the order deeming the  
26 Plaintiff's Request for Admissions Set One admitted.

27 Defendant Defendant's motion is made pursuant to California Code of Civil Procedure  
28 §2033(m) on the grounds that the law permits the withdrawal of deemed admissions based on

1 "mistake, inadvertence, or excusable neglect" and that the party who obtained the admission will  
2 not be substantially prejudiced.

3 This motion is based on this notice, the accompanying points and authorities, on the  
4 declaration served and filed herewith, on all of the pleadings, records and papers filed herein, and  
5 such oral and documentary evidence as may be received at the hearing.

6  
7 Dated this \_\_\_ day of October, 2003

8 LEGAL AID SOCIETY OF ORANGE COUNTY

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10 By: \_\_\_\_\_  
11 William T. Tanner  
12 Attorney for Defendant Defendant  
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1 LEGAL AID SOCIETY OF ORANGE COUNTY  
By: William T. Tanner  
2 SBN: 173453  
902 N. Main Street  
3 Santa Ana, California 92701

4 Attorney for the Defendant Defendant  
5  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ORANGE

10 HARBOR JUSTICE CENTER -LAGUNA HILLS FACILITY

11 PLAINTIFF ASSOCIATION,

12 Plaintiff,

13 vs.

14 DEFENDANT; DEFENDANT; and DOES 1

15 to 30, inclusive,

16 Defendants

) Case No.: 02SL0

) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES FOR MOTION TO**  
) **WITHDRAW DEEMED ADMISSIONS**

) HEARING DATE/TIME:

) DEPT. NO.: S09

) JUDGE: Hon. Michael McCartin

) DATE ACTION FILED: 12/03/02

) TRIAL DATE: Not Set

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19  
20 Defendant, Defendant, submits the following Memorandum of Points and Authorities in  
21 support of the Motion to Withdraw Deemed Admissions.

22 **INTRODUCTION**

23 Defendant, Defendant, was previously representing herself. While she was In Pro Per,  
24 she did not respond to the Plaintiff's Request for Admissions. The Plaintiff then filed a motion  
25 to have the Request for admissions deemed admitted by the court. Defendant, Defendant, has  
26 served Responses to the Plaintiff's Request for Admissions Set One and requested opposing  
27 counsel stipulate to an order setting aside the admissions that were deemed admitted. She is now

28 ///

1 represented by counsel and is moving the court to withdraw the admissions that were deemed  
2 admitted.

### 3 ARGUMENT

#### 4 I.

#### 5 **A PARTY MAY MOVE THE COURT** 6 **TO WITHDRAW ADMISSIONS DEEMED** 7 **ADMITTED FOR FAILURE TO RESPOND**

8 **R** "A party may withdraw or amend an admission made in response to a request for  
9 admission..." CCP §2033 (m). The California Supreme Court has interpreted this statute to  
10 "permit the withdrawal or amendment of deemed admissions." *Wilcox v. Birtwhistle*, 21 Cal. 4<sup>th</sup>  
11 973, 983 (1999). The Court in the *Wilcox* case specifically stated:

12 **A** The propounding party who gets "lucky" and receives no  
13 response then ... "hits the jackpot" and "wins" an irrevocable  
14 deemed admitted order disposing of the lawsuit. By permitting  
15 relief under subdivision (m), we eliminate such undeserved  
16 windfalls and the resulting subversion of the policy favoring the  
17 resolution of lawsuits on the merits. *Id.*

18 **C** Pursuant to the *Wilcox* case, this Court has the power to set aside or withdraw admissions  
19 deemed admitted even though she did not respond to the request for admissions. Therefore, this  
20 Court should permit the motion for the withdrawal of the deemed admissions.

#### 21 II.


#### 22 **WITHDRAWAL OF DEEMED ADMISSIONS BASED ON** 23 **MISTAKE, INADVERTENCE, OR EXCUSABLE NEGLIGENCE**

24 **R** "The court may permit withdrawal or amendment of an admission only if it determines  
25 that the admission was the result of mistake, inadvertence, or excusable neglect, and the party  
26 who obtained the admission will not be substantially prejudiced in maintaining that party's  
27 action or defense on the merits." CCP §2033 (m).

28 **A** Defendant, Defendant, has been In Pro Per for the majority of this case; as a result, she  
was unaware of the proper procedure and the steps needed to complete the Plaintiff's discovery  
requests. Plaintiff has served multiple discovery requests including Form Interrogatories,  
Special Interrogatories, Genuineness of Documents, and Request for Admissions. Defendant

1 Defendant has tried to properly respond but obviously has been unsuccessful. Defendant  
2 Defendant has now retained an attorney and has served responses. The Plaintiff will not be  
3 substantially prejudiced and the withdrawal of the admissions deemed admitted will enable this  
4 case to be tried on its merits. No trial has been set and discovery is continuing.

5 Additionally, many of the deemed admissions are obviously false; this would result in  
6 substantial prejudice to Defendant Defendant in defending this lawsuit, should the deemed  
7 admissions not be set aside. For example, one request that was deemed admitted states that  
8 Defendant Defendant has "entered into a lease agreement with Larry Messner." (*Plaintiff's*  
9 *Request for Admissions, pg 2 line 23*). In fact, Defendant Defendant never signed any contract or  
10 entered into any agreement, written or oral, with the owner Larry Messner regarding the leasing  
11 of the property that is the subject of this lawsuit.

12  Another request that was deemed admitted states that Defendant Defendant "caused  
13 damage to the residence in the amount of \$8,977.58." (*Plaintiff's Request for Admissions, pg 2*  
14 *line 25*). This deemed admission unduly prejudices Defendant Defendant as it admits an  
15 ultimate issue that is pending in this lawsuit. Furthermore, this deemed admission is simply  
16 false.

17 Based on the foregoing, the order deeming the admissions admitted must be set aside.  
18

### 19 CONCLUSION

20 CCP §2033(m) allows a party to move the court to withdraw the admissions that were  
21 deemed admitted. Based on the above, Defendant's motion to withdraw the order granting the  
22 Plaintiff's Request for Admissions deemed admitted should be granted.  
23

24 Dated this \_\_\_\_ day of October, 2003

25 LEGAL AID SOCIETY

26  
27 By: \_\_\_\_\_  
28 William T. Tanner  
Attorney for Defendant Defendant

1 LEGAL AID SOCIETY OF ORANGE COUNTY  
By: William T. Tanner  
2 SBN: 173453  
902 N. Main Street  
3 Santa Ana, California 92701  
4 Attorney for the Defendant  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ORANGE

10 HARBOR JUSTICE CENTER -LAGUNA HILLS FACILITY

11 ASSOCIATION,  
12 Plaintiff,  
13 vs.  
14 ; and DOES 1 to 30, inclusive,  
15 Defendants  
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Case No.: 01SL00099090  
  
**DECLARATION OF DEFENDANT IN  
SUPPORT OF MEMORANDUM OF  
POINTS AND AUTHORITIES MOTION  
TO WITHDRAW DEEMED ADMISSIONS**  
  
HEARING DATE/TIME: 11/20/09 at 9:30AM  
DEPT. NO.: S09  
JUDGE: Hon. Michael McCartin  
  
DATE ACTION FILED: 12/03/2012  
TRIAL DATE: Not Set

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21 I, \_\_\_\_\_, am the Defendant in the above-entitled case. If called upon, I  
22 would and could testify competently to the following facts:

- 23 1. From the time that I was served the Summons and Complaint in December 2002,  
24 until the time that I submitted the Substitution of Attorney Form in October 2003, I  
25 have been representing myself in the above-entitled action.  
26 2. I am not familiar with the discovery process.  
27 3. I have tried, in good faith, to fulfill my obligations as the Defendant in this lawsuit.  
28 4. I have attended all case management conferences.

- 1 5. I have responded to Plaintiff's Form Interrogatories to the best of my ability.
- 2 6. I was not aware of the time limits imposed on Plaintiff's Request for Admissions.
- 3 7. I was not aware of the consequences of not responding to Plaintiff's Request for
- 4 Admissions in a timely fashion.
- 5 8. In order to better understand and comply with the court and discovery procedures, I
- 6 have retained a firm, The Legal Aid Society of Orange County, to assist me in the
- 7 above-entitled action.
- 8 9. Many of the admissions that were deemed admitted are not, in actuality, true
- 9 statements.
- 10 10. In order to try this case on its merits, I respectfully request that the Motion to
- 11 Withdraw Deemed Admissions be granted

12 I declare under penalty of perjury that the foregoing is true and correct. Executed this \_\_\_\_\_

13 Day of October 2003 at Orange County, California.

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16 Defendant  
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