



# Appellate Reports

## *St. Mary offers clarity in responding to Requests for Admissions*

BY JEFFREY ISAAC EHRLICH

### *St. Mary v. Superior Court (Schellenberg)*

(2014) \_\_ Cal.App.4th \_\_ (6th Dist.)

#### **Who needs to know about this case:**

Lawyers who propound and respond to requests for admissions (RFAs) under the Discovery Act.

**Why it's important:** Provides valuable clarity concerning the proper means of responding to RFAs and for evaluating motions to address defective responses. Holds that the trial court abuses its discretion in granting a motion to deem RFAs admitted after responding party serves response four days late when the responses substantially comply with the Discovery Act's requirements for RFAs; provides standard for how courts must evaluate motions to deem RFAs admitted, and holds that RFA responses that provide additional explanatory information can be sufficient.

**Synopsis:** St. Mary sued Schellenberg and his wife for fraud arising out of a failed real-estate investment. Schellenberg propounded 105 RFAs on St. Mary. Her counsel requested an extension of time to respond to the RFAs, but Schellenberg did not respond to that request until after the responses were due, and then only granted a conditional extension that St. Mary did not accept. St. Mary served verified responses four days late. Schellenberg moved to have the RFAs deemed admitted. The trial court deemed 41 of the 105 RFAs admitted and awarded Schellenberg sanctions. St. Mary

petitioned for a writ. Writ issued, and order granting motion and sanctions vacated.

Section 2033.010 of the Code of Civil Procedure authorizes the use of RFAs. If no protective order is sought, responses are due within 30 days of service, and the response must be made in writing, under oath; each response must answer the substance of the requested admission. The responding party must either (1) admit as much of the request that is true as expressed in the request itself or as reasonably qualified by the responding party; (2) deny so much of the request is untrue; or (3) specify that the responding party lacks sufficient information to respond.

If the propounding party believes that the responses to the RFAs are insufficient, it may bring three types of motions, depending on the circumstances: (1) a motion to deem the RFAs admitted based on the responding party's failure to serve any responses in a timely fashion (a "deemed admitted motion"); (2) a motion to compel further responses when the responses are claimed to be insufficient or there are improper objections (a motion for further responses); or (3) a motion to deem responses admitted or for sanctions based on the responding party's disobedience of a prior order compelling further responses. Schellenberg's motion was a deemed-admitted motion.

Under § 2033.280, subd. (c), a deemed-admitted motion cannot be granted if, before the hearing on the motion, the responding party served

responses to the RFAs that are substantially compliant with the requirements in § 2033.220. Here, St. Mary served her responses before the deemed-admitted motion was even filed, so the dispositive issue is whether her responses were substantially compliant with the requirements of § 2033.220.

The court rejected the trial court's piecemeal review of St. Mary's response, in which it found that 64 responses were sufficient and 41 were not. There is no authority for this approach. Under § 2033.280, sub. (c), the court must evaluate the entire response in toto for substantial compliance, and not segregate each individual RFA response for the purpose of finding that some are compliant and others are not.

Even if the court were to accept the piecemeal approach taken by the trial court, it does not agree with its determination that St. Mary's responses were not substantially compliant. For example, one RFA asked St. Mary to admit that she attended a meeting with David Nilsen on January 13, 2006. She responded, "Admit. Thomas Schellenberg was also present." The trial court improperly held that the additional statement about Schellenberg made the response non-compliant. It is not inappropriate to add additional information or to explain the basis for an admission or denial of an RFA.

The court's review of the totality of St. Mary's response to the RFAs was that they were substantially compliant with the Discovery Act's requirements. In his reply in support of his motion,



MARCH 2014

Schellenberg attempted to transmute his deemed-admitted motion into a motion to compel further responses. This was improper, since the motion was noticed as a deemed-admitted motion, and no explanation was provided in it about any defects in any of the responses by St. Mary. The trial court

abused its discretion in granting the motion.

*Jeffrey Isaac Ehrlich is the principal of the Ehrlich Law Firm, with offices in Encino and Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA*

*Board of Governors. His practice emphasizes appellate support for the Southern California trial bar and insurance bad-faith litigation. He is editor-in-chief of Advocate, the Journal of Consumer Attorneys Associations for So. California.*



Ehrlich