

# Sample

1 PAUL SAMPLE  
2 123 ANYSTREET  
3 SACRAMENTO, CA 95814  
4 916-555-1234  
5 Defendant, In Pro Per

6  
7 SUPERIOR COURT OF CALIFORNIA COUNTY OF SACRAMENTO

8 Identify the plaintiff(s), defendant(s), and  
9 case number.

10 ACME, INC., Case No.: 34-2008-00099999  
11 Plaintiff, )  
12 vs. ) NOTICE OF MOTION AND MOTION TO  
13 PAUL SAMPLE, ) BE RELIEVED FROM ADMISSIONS (CCP  
14 Defendant ) \$2033.300(a); POINTS AND  
15 ) AUTHORITIES; DECLARATION  
16 ) Date: June 18, 2012  
17 ) Dept Time: Dept. 53 at 2:00 p.m.  
18 ) Date Complaint was filed: March 12, 2008

19 Insert the date, time and department of  
20 the motion, as well as the date that the  
21 lawsuit was first filed. See Step 1.3 for  
22 information on how to select a hearing  
23 date.

24 YOU ARE HEREBY NOTIFIED THAT at the above-captioned date and time and department in the  
25 courthouse located at 813 Sixth Street, Sacramento, California that Paul Sample will move the court  
26 for an order relieving him or her from admissions, and permitting him or her to serve admissions  
27 responsive to the defendant's Request for Admissions, Set One. This motion is made on the grounds  
28 of inadvertence, surprise, mistake or reasonable neglect. This motion will be based upon this notice,  
the attached points and authorities and declaration of Paul Sample, and the records and files in this  
action.

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32 ////

33 Insert your name and the set number of the admissions this motion  
34 concerns, where appropriate

35 MOTION TO BE RELIEVED OF ADMISSIONS- 1

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Motion for Relief from Admissions (p. 1)



1 Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this matter by  
 2 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the  
 3 department may be downloaded off the court's website. If the party does not have online access, they  
 4 may call the dedicated phone number for the department as referenced in the local telephone  
 5 directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and  
 6 receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court  
 7 day before the hearing, no hearing will be held.  
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The local rules of the Sacramento Superior Court require that this notice about the tentative ruling system be included with each motion. Other courts have different requirements.

Dated: May 16, 2012

*Paul Sample*

Paul Sample  
Defendant, In Pro Per

Date, sign, and print your name.

MOTION TO BE RELIEVED OF ADMISSIONS- 2

Motion for Relief from Admissions (p. 2)



**Memorandum of Points and Authorities**

**I. Background**

3 This motion arises from *Acme Inc.*'s Request for Admissions Set *One*.

4 On November 14, 2011:

5  the court deemed the admissions as admitted.

6  the moving party served admissions in response.

7 The moving party is now asking that the court relieve him or

8 the basis of inadvertence, mistake or excusable neglect, and

9 a response to these admissions.

**II. LEGAL ARGUMENT**

**A. Pursuant to California Code of Civil Procedure 2033.300(a)  
the Court May Permit the Defendant to Respond**

14 Pursuant to California Code of Civil Procedure §2033.300(a) an admission cannot be deemed

15 amended or withdrawn except by leave of the court after noticed motion; see italics on the *Valerio v.*

16 *Andrew Youngquist Const.* (2002) 103 Cal.App 4<sup>th</sup>1264, 1272. This includes "deemed admissions"

17 ordered by the court under Code of Civil Procedure §2033.280 (b), as well as admissions expressly

18 made by party. *Wilcox v. Birtwhistle* (1999) 21 Cal.4<sup>th</sup> 973, 979.

19 Pursuant to Code of Civil Procedure §2033.300(b), a party will be permitted to withdraw or

20 amend on admission only if the court finds:

21 1. The admission resulted from "mistake, inadvertence or excusable neglect;" and

22 2. No substantial prejudice to the requesting party will result from allowing the admissions to be

23 withdrawn or amended. See *New Albertsons, Inc. v. Sup. Ct. (Shanahan)* (2008) 168 Cal.

24 App. 4<sup>th</sup> 1403, 1418.

25 Upon the required finding, the court may relieve a party of the effect of that party's admissions or

26 even deemed admissions, and allow new or amended responses to be served upon the party

27 requesting the admissions.

MOTION TO BE RELIEVED OF ADMISSIONS- 3

Print the name of the party whose admissions this motion concerns, and the set number of the admissions.

Print the date that the court deemed the admissions admitted, or you served your admissions, and identify whether the admissions were served by you or deemed admitted by the court. You may either check the box by hand, or delete the checkbox for the text you are asserting, and delete the checkbox and text for anything that you are not asserting.

This section explains the legal basis for a motion to be relieved from admissions. If your circumstances are unique, you may wish to supplement this section based on your own research.

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3	For the reasons explained in the attached declaration, the moving party requests that the Court relieve
4	him or her of the admissions, and permit a new or amended response to the admissions to be served.
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6	Dated: May 17, 2012
7	<i>Paul Sample</i>
8	Paul Sample
9	Defendant, In Pro Per
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Date, sign, and print your name

MOTION TO BE RELIEVED OF ADMISSIONS- 4

Motion for Relief from Admissions (p. 4)



The declaration contains the evidence that supports your motion. It is the most important part of the motion. Because your facts are unique to your case it is preferable that the declaration be written specifically to your circumstances, using this template only as a rough guide to the types of facts you might include.

1 Identify whether you are the plaintiff or defendant. **DECLARATION**

2

3 I, am the **Defendant** in this matter, and I am seeking to be relieved from deemed admissions, as well as the set number and party that propounded the admissions. You may either check the box by hand, or delete the checkbox for the text you are asserting, and delete the checkbox and text for anything that you are not asserting.

of Admissions:

1. I am asking that the court to

Serve amended admissions in

Serve admissions in reply to the Request for Admissions Set **One** propounded by **Acme, Inc.**, that were previously deemed admitted on **April 28, 2012**.

2. Attached as Exhibit A is a list of the proposed Admissions that I request to serve.

Be sure when describing your inadvertence, mistake, or excusable neglect to use enough detail in a clear and concise description. Remember that your declaration is being read by a person who has no personal knowledge of any of the facts of your case, or how your case is being litigated, and for this reason it is crucial to explain your reasons fully, as if describing it for the first time to a stranger.

3. I am requesting that I be permitted to serve new admissions, or amend my previous admissions for the following reasons, which demonstrate that my previous response or lack thereof was the result of inadvertence, mistake, or excusable neglect: **I had no knowledge of the plaintiff's Requests for Admissions. I am using a PO Box to receive my mail, as I have moved several times in recent years. I regularly check the PO Box, and examine all mail received. Having been involved in a lawsuit before, I recognize legal documents, and had I received the plaintiff's Requests for Admissions, would have researched what type of response is required, and would have promptly served the proposed Response to Requests for Admissions attached as Exhibit A. Because I did not know about the Request for Admissions, nor about the Motion to Deem Facts Admitted, I was not able to respond to them in time. I am therefore asking the court to relieve me of the deemed admissions.**

Some of the factors the court might find important in determining whether the other party will be prejudiced include, but are not limited to: the promptness in which relief from admissions is granted; the nature of the facts that were admitted or deemed admitted; and the reliance of the requesting party on the admission in conducting or not conducting further discovery

4. For the following reasons, I contend that this request will not cause prejudice to the party requesting the admissions: **Acme, Inc. received an order deeming its Request for Admissions, Set One, on April 28, 2012. I learned of this order on May 3, 2012, and promptly began working on this motion. Relieving me of these admissions would not be prejudicial to the plaintiff, as allowing me to truthfully respond to the admissions, which I had previously attempted, would simply mean that the case would proceed to trial, where the case could be decided on its merits.**

MOTION TO BE RELIEVED OF ADMISSIONS- 5

Motion for Relief from Admissions (p. 5)



State any other facts you wish the court to consider here.

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5. Other facts I wish the court to consider: As seen in my proposed responses to these requests, I do not deny that I had this account, or that I previously used it. I do, however, dispute that there has been any activity on this account since 2004, when I paid off the balance in full using funds I inherited after my father's death. I believed the account to be closed at that point, and received no further billing statements. However, it appears that the account was not closed, and that the creditor continued to process internal fees and interest on those fees, for several years.

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

Dated: May 17, 2012

Paul Sample

Paul Sample  
Defendant, In Pro Per

Date, sign, and print your name where indicated.

MOTION TO BE RELIEVED OF ADMISSIONS- 6

Motion for Relief from Admissions (p. 6)



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# Proposed Admissions Exhibit A

MOTION TO BE RELIEVED OF ADMISSIONS- 7

Motion for Relief from Admissions (p. 7)



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PAUL SAMPLE  
123 ANY STREET  
SACRAMENTO, CA, 95814  
916-555-1234  
Defendant, In Pro Per

Responding party's name, address and telephone number. "In Pro Per" means you are representing yourself.

Your motion **must** include your proposed responses to the requests for admission. If not included, your motion will be denied. For more information on responding to requests for admission, see the Step-by-Step guide on our website at [www.saclaw.org/respond-req-admissions](http://www.saclaw.org/respond-req-admissions).

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

Case number

ACME, INC.  
  
vs.  
  
PAUL SAMPLE

Plaintiff(s)  
  
Defendant(s)

Party names and designations.

Case No.: 34-2008-00009999

DEFENDANT PAUL SAMPLE'S  
RESPONSES TO PLAINTIFF ACME, INC.'S  
REQUEST FOR ADMISSIONS

SET ONE

Set number. This number must match the number shown on the requests.

PROPOUNDING PARTY: ACME, INC.  
RESPONDING PARTY: PAUL SAMPLE  
SET NUMBER: ONE (1)

Names of the propounding (asking) and responding parties, and the set number. This number must match the number shown on the requests.

RESPONDING PARTY hereby answers PROPOUNDING PARTY's Request for Admissions:

REQUEST FOR ADMISSION NO. 1:  
Admit.

REQUEST FOR ADMISSION NO. 2:  
Deny

REQUEST FOR ADMISSION NO. 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.

Respond to each request individually. You do not need to repeat the text of the request, but your responses must be in the same order as the requests, and each response should be labeled with the same number or letter as the request.

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

Your responses **must** include this verification language.

Dated: \_\_\_\_\_ Paul Sample, Defendant In Pro Per

Sign and date.

MOTION TO BE RELIEVED OF ADMISSIONS- 8