

§ 6.3 Regular Motions

From time to time during the course of a lawsuit, a party might need court intervention to allow them to do something or not do something, or to force the opposing party or a third party to do or not do something. The attorney applies to the court for such relief by filing a motion for an order of some kind. For example, a party might file a motion for an order allowing them to amend a complaint, or granting an extension of time to respond to something, or for relief from default; a party might seek an order compelling an opposing party to provide further answers to interrogatories or other discovery.

Various rules govern regular motions, including rules regarding contents, number of pages allowed, and deadlines for filing and serving notice of motions, opposition to motions, and replies to oppositions. Below is a table showing some of the basic rules.

General Rules for Regular Motions

Last day to hear non-expert discovery motions C.C.P. § 2024.020	15 days before initial trial date
Last day to hear expert discovery motions C.C.P. § 2024.030	10 days before initial trial date
Notice and motion must be filed and served C.C.P. § 1005(b)	at least 16 court days before hearing ^{1/}
Opposition must be filed and served C.C.P. § 1005(b)	at least 9 court days before hearing
Reply must be filed and served C.C.P. § 1005(b)	at least 5 court days before hearing
Limit on length of opening/opposing P's & A's C.R.C., Rule 3.1113(d)	15 pages
Limit on length of reply P's & A's C.R.C., Rule 3.1113(d)	10 pages
Separate statement required C.R.C., Rule 3.1345	motion to compel further answers

A regular motion always contains a notice of hearing (also referred to as “notice of motion”) and the motion itself, and, unless excepted under C.R.C., Rule 3.1114, a memorandum of points and authorities. It often contains one or more declarations and exhibits. Sometimes a separate statement is required; sometimes a proposed order is submitted. C.R.C., Rule 3.1112(c) allows these various parts to be prepared and filed either as separate documents or combined in one or more documents. If combined, the caption must list all of the attached documents (see following example). If filed separately, it should say so below the title of the notice of motion, e.g., “[Declaration of Joe Lawyer filed concurrently.]”

^{1/} Service must be made earlier if the papers are not personally served. (See § 2.3)

- #2 - Leave to file longer P's & A's may be requested by filing an *ex parte* application on written notice to other parties at least 24 hours before the memorandum is due, and stating reasons why the page limit cannot be met. (C.R.C., Rule 3.1113(e))
- #3 - C.R.C., Rule 3.1113(f) requires that a table of authorities and a table of contents be attached to any P's & A's exceeding 10 pages, and an opening summary of argument be included if the P's & A's exceed 15 pages. (We have included a sample table of authorities and table of contents following the Memorandum of Points and Authorities. If required, attach them in front of the P's & A's.)

Table - Note #3

Extra Requirements for P's & A's in Regular Motions Exceeding 10 or 15 Pages

	Exceeds 10	Exceeds 15
Table of Authorities	Required	Required
Table of Contents	Required	Required
Summary of Argument		Required

- 1' Begin with line 1 and type the title in all caps, underlined, "MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF _____."
- Immediately below is a description of how to type the body as in our example. Before you begin, be sure to totally familiarize yourself with "How to Type Citations," Appendix "C" in the back of this book. Note that C.R.C., Rule 1.200 allows the citation form to follow either the California Style Manual or The Bluebook: A Uniform System of Citation, but the style must be consistent throughout the document.
- 2' Each point of law is separately numbered with a Roman numeral centered on the page, has indented margins and is typed in all caps and underlined.
- 3' Lengthy quotations are set off with indented margins.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR ORDER COMPELLING ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES TO DEFENDANT

INTRODUCTION

This Motion arises out of Defendant's failure to respond to interrogatories propounded by Plaintiff. Plaintiff seeks an order compelling Defendant to answer the interrogatories, without objection, pursuant to C.C.P. § 2030.290(b). In addition, Plaintiff seeks an award of monetary sanctions against Defendant and his counsel on three grounds: (1) if Defendant unsuccessfully opposes this Motion, monetary sanctions must be awarded pursuant to C.C.P. §2030.290(c); (2) monetary sanctions should be awarded pursuant to C.C.P. §2023.030 for Defendant's misuse of the discovery process; and (3) monetary sanctions should be awarded pursuant to C.R.C., Rule 3.1030.

I.

THE COURT SHOULD ISSUE AN ORDER COMPELLING
DEFENDANT TO ANSWER THE INTERROGATORIES
WITHOUT OBJECTION

As appears more fully in the attached Declaration of Joe Lawyer ("Lawyer Decl."), Plaintiff personally served its First Set of Interrogatories on Defendant on October 9, 1998. (Lawyer Decl., Para. 2) Pursuant to C.C.P. § 2030.260(a), Defendant's responses were due November 9, 1998. As of the date hereof, no responses have been received. (Lawyer Decl., Para. 2)

C.C.P. § 2030.290 provides, in pertinent part:

If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply: (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories . . . (b) The party propounding the interrogatories may move for an order compelling response to the interrogatories.

EXCERPT 3

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§ 6.7 Motions for Summary Judgment and Summary Adjudication

Motions for summary judgment (“MSJ”) and motions for summary adjudication (“MSA”) are intended to either dispose of a case entirely (summary judgment) or to dispose of some, but not all, of the issues in a case (summary adjudication). They are used where material facts (the ones on which liability would turn) are undisputed. If facts are undisputed, there is no need for the court or jury (triers of fact) to determine those facts. Instead, the rights of the parties can be determined as a matter of law. Either party can file these motions.

For example, in our case, assume Mr. Wronged has sued Mr. Wrongdoer on only one theory, negligence, on the sole basis that Mr. Wrongdoer was exceeding the posted speed limit, that the speeding caused the accident, and the accident resulted in Mr. Wronged suffering damages. In order to prevail, Mr. Wronged’s lawyer has to prove every one of those elements. What if Mr. Wrongdoer’s lawyer can prove, and Mr. Wronged’s lawyer has absolutely no facts to dispute, that Mr. Wrongdoer was traveling at or under the posted speed limit? In that case, since a material element of the cause of action would be missing, the cause of action would fail. Given that Wronged only sued on that one cause of action, there would be nothing left for a trier of fact to determine. Thus, Mr. Wrongdoer should prevail on his MSJ, ending the lawsuit.

If there are no disputed facts as to one cause of action or a particular element of a cause of action, but there are disputed facts as to another cause of action or element of a cause of action, neither party would be entitled to summary judgment, but one may be entitled to summary adjudication. For example, assume Mr. Wronged alleged two causes of action against Mr. Wrongdoer, one for negligence for speeding, and one for breach of statutory duty as owner of the vehicle for failing to fix the car’s broken tail lights. If Mr. Wrongdoer can prove, and Mr. Wronged cannot dispute, that he was traveling at the speed limit, Wrongdoer could file an MSA as to the cause of action involving speeding, but the statutory duty cause of action would remain.

On the other hand, assume Mr. Wronged can prove, and Mr. Wrongdoer cannot dispute, that Mr. Wrongdoer was traveling 20 miles over the posted speed limit. In that case, Mr. Wronged may seek summary adjudication on the element of breach of duty; he would still have to prove at trial that the breach caused the accident and the resulting damages.

An MSA may be brought by itself or in the alternative to an MSJ. For example, if a party believes it can show that there are no disputed facts as to any of the four elements of a particular cause of action, but realizes that there might be disputed facts as to one or more of the elements, that party might move for summary judgment, and in the alternative for summary adjudication.

MSJ’s and MSA’s are governed by C.C.P. § 437c and C.R.C., Rules 3.1350-3.1354. Either party may bring these motions at any time after 60 days have elapsed since the appearance of the opposing party. **The motions must be heard at least 30 days before trial.** (C.C.P. § 437c(a))

EXCERPT 4

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In form, they are much like regular motions, containing a notice of motion, points and authorities, declarations, and exhibits. However, unlike regular motions, they always require separate statements. In addition, they are subject to significantly different notice requirements and page limitations, as the following table illustrates.

Differences Between Regular Motions and MSJ's/MSA's

<u>Specifications</u>	<u>Regular Motions</u>	<u>MSJ's and MSA's</u>
1 st day may be brought	May depend upon subject of motion; no rule barring motions in general prior to a certain date.	Not until 60 days after opposing party has appeared - C.C.P. § 437c(a)
Last day may be heard	Non-expert discovery motions: 15 days before initial trial date; expert discovery motions: 10 days before initial trial date; otherwise, no deadline.	30 days before trial - C.C.P. § 437c(a)
Notice and motion must be filed and served	at least 16 court days before hearing	at least 75 days before hearing C.C.P. § 437c(a) [even earlier if not personally served]
Opposition [and objections to evidence in MSA/MSJ] must be filed and served	at least 9 court days before hearing	at least 14 days before hearing C.C.P. § 437c(b)(2)
Reply [and objections to evidence in MSA/MSJ] must be filed and served	at least 5 court days before hearing	at least 5 days before hearing C.C.P. § 437c(b)(4)
Limit on opening and opposing P's & A's	15 pages	20 pages - C.R.C., Rule 3.1113(d)
Limit on reply P's & A's	10 pages	10 pages - C.R.C., Rule 3.1113(d)
When Separate Statement required	with motion to compel further answers	ALWAYS - C.C.P. § 437c(b)(1)

C.R.C., Rule 3.1350 lists the various parts of MSJ's and MSA's and oppositions to those motions. The notices of motion, declarations, and points and authorities follow the same basic format as regular motions. The formats for the separate statements in support of and in opposition to the two motions are specifically described in Rule 3.1350(h). There is one format specified for separate statements in support of MSJ's and another for separate statements in support of MSA's. In addition, as of January 2007, there is a specified format for objections to evidence, specifically described in Rule 3.1354.

Since some aspects of the formats differ from one another, we deal with the two motions separately, starting with the MSJ and then showing how the MSA is different.