

## Chapter 6 MOTIONS

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YOU ARE VIEWING EXCERPTS FROM LBTN WHICH ARE LIKELY OUT-OF- DATE.  
USE THEM TO SEE WHAT IT CONTAINS AND HOW THE MATERIAL IS PRESENTED.

## § 6.2 Introduction

Motions are probably the most complicated and most frequently used documents in the course of a typical lawsuit. They are governed by the Code of Civil Procedure ("C.C.P.") and the California Rules of Court ("C.R.C.").

There are different types of Motions. This section is divided by subsections, each concerning a different type of motion:

- Regular Motions
- Ex parte* Applications
- Motions to Strike
- Demurrers
- Motions for Summary Judgment and Summary Adjudication

The second and the last subsections rely heavily on the first, so be sure to start by reading Regular Motions and then skip to the appropriate subsection of concern to you.

### WARNING!!

**THERE MAY BE SEVERAL TIME LIMITATIONS AFFECTING YOUR RIGHT TO MAKE A MOTION. FAILURE TO COMPLY WITH THE DEADLINES WILL RESULT IN THE WAIVER OF YOUR RIGHT TO MAKE THE MOTION.**

For example, a motion to compel further answers to interrogatories, requests for production, and requests for admission must be brought within 45 days of the service of the particular response (C.C.P. §§ 2030.300(c), 2031.310(c), 2033.290(c)), and must be heard at least 15 days before the *initial* trial date (C.C.P. § 2024.020(a)). A motion for summary judgment must be served at least 75 days in advance of the hearing, and must be heard at least 30 days prior to trial (C.C.P. §437c(a)).

**BE SURE TO CHECK THE APPLICABLE RULES AND CODES AFFECTING THE PARTICULAR MOTION.**

### § 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. 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 the initial trial date
Last day to hear expert discovery motions C.C.P. § 2024.030	10 days before the initial trial date
Notice and motion must be filed and served C.C.P. §§ 1005(b) and 12c	at least 16 court days before the hearing <sup>1</sup> (counting backward from the hearing date)
Opposition must be filed and served C.C.P. §§ 1005(b) and 12c	at least 9 court days before the hearing (counting backward from the hearing date)
Reply must be filed and served C.C.P. §§ 1005(b) and 12c	at least 5 court days before the hearing (counting backward from the hearing date)
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 <i>further</i> 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.]”

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<sup>1/</sup> Service must be made earlier if the papers are not personally served. (See § 2.3)

### § 6.3.1 "Notice of Motion"

The notice of motion informs the court and the parties of the nature of, and the grounds for, the requested order, and the date, time, and place for the hearing. It may also give notice of the moving party's intention to appear at the hearing telephonically. (See § 6.3.10)

**All parties must be given at least 16 court days notice, plus the additional time under C.C.P. § 1005(b) if service is by a means other than personal service.** (See § 2.3.)

#### § 6.3.1.1 Setting the Hearing

To set a hearing, you must coordinate: (1) any applicable motion cut-off date, (2) the service method, and (3) the court's availability (some courts only hear motions on specified days of the week).<sup>2</sup> **C.C.P. § 12c requires counting backward from the hearing date to determine adequacy of notice. Thus, while you will likely count forward to "guesstimate" the hearing date, the only way to make sure the date is far enough away to serve by a particular method is to then count backward.** (See § 2.10 at Step 4B(2)(c))

**ONCE YOU HAVE A HEARING DATE, BE SURE TO CALENDAR:**

- the date and time of the hearing
- the deadlines for filing and serving the moving papers, the opposition, and the reply (see table on p. 6-7)
- a reminder to check the tentative ruling (see § 6.3.9)
- a reminder to give intent to appear by telephone, if any (see § 6.3.10)

#### § 6.3.1.2 Preparing the Notice

- 1▶ Use the same caption as on previous pleadings.
- 2▶ The title must list all of the attached documents (C.R.C., Rule 3.1112(c)). If the attorney plans to appear telephonically (see § 6.3.10), add "Telephone Appearance" immediately below the title of the document. The footer is an abbreviation of the title. (C.R.C., Rule 2.110)
- 3▶ Below the title, enter the date, time, and department or division for the hearing, the name of the judge, if known, the date the action was filed, and the trial date, if set. (C.R.C., 3.1110(b))
- 4▶ Type the standard introductory clause as described on page 5-10, Step 3.
- 5▶ Type "PLEASE TAKE NOTICE" in all caps at the beginning of the next paragraph. This paragraph must include the nature of the order being sought and the grounds for issuance of the order. (C.R.C., Rule 3.1110(a))

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<sup>2</sup> For example, discovery motions must be heard at least 15 days before trial. If the court does not hear motions that day, you must set it earlier. Always check with the court before setting a hearing.



- #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**

	<b>Exceeds 10</b>	<b>Exceeds 15</b>
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.

**Memorandum of Points and Authorities (page one)**

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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.