

Chapter 6 MOTIONS

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THESE LBTN EXCERPTS ARE SEVERAL YEARS OLD AND SHOULD NOT BE RELIED UPON FOR ANYTHING OTHER THAN AS EXAMPLES OF WHAT LBTN CONTAINS AND HOW IT IS ORGANIZED AND WRITTEN.

§ 6.1 Vocabulary

Authorities	sources supporting points
Declarant	one who makes and signs a declaration
Declaration	a statement setting forth facts and signed under penalty of perjury
Demurrer	a responsive pleading in which a defendant or cross-defendant objects to a complaint or cross-complaint on various grounds, including that it fails to allege facts sufficient to state a cause of action; follows format of a motion
Exhibit	supporting documentation or material usually designated by capital letters or numbers (Exhibit "A", Exhibit "1", etc.)
Ex parte application	(Latin "for one side only"); an application for a court order made on short or no notice
Motion	an application by a party for a court order
Motion for summary adjudication	motion intended to determine fewer than all ultimate issues or causes of action without trial where there is no triable issue of material fact as to those issues
Motion for summary judgment	motion intended to dispose of an entire action on the ground that the action has no merit or there is no defense thereto where there is no triable issue of material fact
Motion to strike	a motion requesting that all or part of a pleading be deleted
Moving party	party who makes a motion, also called "movant"
Order	directive of the court
Point	legal theory upon which a motion is based
Responsive pleading	an answer, demurrer or cross-complaint filed in response to allegations of a complaint or other pleading
Sanctions	penalty assessed against a party or a party's attorney; can be a monetary, evidence, issue or terminating sanction
Stipulate	to agree

[NEXT PAGE IS PAGE 6-6]

§ 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 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)

Notice of Motion (page one)

1> 1 JOE LAWYER, ESQ. (State Bar #7756234)
2 1000 Colorado Boulevard
3 Suite 555
4 Los Angeles, California 90001-1234
5 Telephone: (213) 452-0000
6 Facsimile: (213) 452-0010
7 Email: joe@joelawyerlaw.com
8 Attorney for Plaintiff
9 FRED A. WRONGED

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 FRED A. WRONGED,
12 Plaintiff,
13 vs.
14 JAMES A. WRONGDOER, and DOES 1
15 through 10, inclusive,
16 Defendants.
17
18
19

Case No. C 126447

2> NOTICE OF MOTION AND MOTION
FOR ORDER COMPELLING
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO
DEFENDANT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF JOE LAWYER
IN SUPPORT THEREOF

Date: January 5, 1999
Time: 9:00 A.M.
3> Dept: 83
Judge: Honorable June Justice
Action Filed: August 3, 1998
Trial Date: Not set

4> 20 TO: Defendant, JAMES A. WRONGDOER, AND TO HIS ATTORNEY OF
21 RECORD:

5> 22 PLEASE TAKE NOTICE that Plaintiff, FRED A. WRONGED, will and does hereby
23 move for an order compelling Defendant, JAMES A. WRONGDOER, to answer the First Set of
24 Interrogatories propounded to him by Plaintiff, and for an order that Defendant and Defendant's
25 attorney, or either of them, pay to Plaintiff the reasonable attorneys fees incurred in preparing and
26 making this Motion and obtaining the orders sought herein, in the sum of One Thousand Four
27 Hundred Fifty Dollars (\$1,450.00) on the grounds that said interrogatories are material and
28 relevant to the issues herein, relate to non-privileged matter, such answers should be required,

-1-

2> MOTION TO COMPEL ANSWERS TO INTERROGATORIES

THESE LBTN EXCERPTS ARE SEVERAL YEARS OLD AND SHOULD NOT BE RELIED UPON FOR ANYTHING OTHER THAN AS EXAMPLES OF WHAT LBTN CONTAINS AND HOW IT IS ORGANIZED AND WRITTEN.

NOTE RE SANCTIONS: C.C.P. § 2023.040 requires: (1) the notice of motion to specify the identity of the person(s) against whom sanctions are sought and the type of sanction requested, (2) the motion to be supported by P's & A's, and (3) the motion to be accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought. (See C.C.P. § 2023.030 for an explanation of monetary sanctions, issue sanctions, evidence sanctions, and terminating sanctions.)

- 6▶ Type the body of the notice in unnumbered paragraph form, indenting the first line of each paragraph 10 spaces.
- 7▶ Type the standard date and signature lines as described in § 1.2.4.

§ 6.3.2 "Memorandum of Points and Authorities"

In the memorandum of points and authorities ("P's & A's"), Mr. Lawyer states the legal theories upon which the motion is based ("points"), cites the source or sources (statutes, cases, rules, etc.) supporting the points ("authorities"), and references supporting facts which will be contained in accompanying declarations and/or exhibits. In the P's & A's, Mr. Lawyer seeks to persuade the court that he/she is authorized to and should grant the motion and issue the requested order.

- **IMPORTANT NOTES RE PAGE LIMITATIONS:**

- #1 - C.R.C., Rule 3.1113(d) provides that opening and responding (opposing) P's & A's in regular motions shall not exceed 15 pages, and reply P's & A's shall not exceed 10 pages.^{3/}

Table - Note #1

**Maximum Pages for P's & A's in Regular Motions
Without Leave of Court**

Opening P's & A's	15 pages
Opposing P's & A's	15 pages
Reply P's & A's	10 pages

^{3/} When counting pages, do not count exhibits, declarations, attachments, tables of contents or the proof of service.

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Memorandum of Points and Authorities: Table of Authorities

1	<u>TABLE OF AUTHORITIES</u>	
2		
3	<u>CASES</u>	<u>PAGE</u>
4	<i>Food 4 Less Supermarkets, Inc. v. Superior Court (Fletcher)</i>	
5	(1995) 40 Cal.App.4th 651	3
6	<i>Ghanooni v. Super Shuttle</i> (1993) 20 Cal.App.4th 256, 260	2
7		
8	<u>STATUTES</u>	
9	Code of Civil Procedure § 2023.010	1
10	Code of Civil Procedure § 2023.030	1, 2
11	Code of Civil Procedure § 2030.260	1
12	Code of Civil Procedure § 2030.290	1, 2
13	<u>RULES</u>	
14	California Rule of Court, Rule 3.1030	4
15		
16	<u>TREATISES</u>	
17	3 Witkin, <u>Summary of California Law, Discovery</u> 42	3
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MOTION TO COMPEL ANSWERS TO INTERROGATORIES		

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§ 6.3.3 **Declarations**

A Declaration is the part of the motion by which the attorney states facts supporting the Motion and authenticates the exhibits. (Oral evidence is only allowed at the hearing for good cause shown pursuant to C.R.C., Rule 3.1306(b).) In addition, if the motion seeks an order compelling further responses (where some response was received), the C.C.P. requires that there be a declaration stating facts showing that the attorney made a reasonable and good faith attempt to informally resolve the issues presented by the motion. (C.C.P. §§ 2030.300(b), 2031.310(b), and 2033.290(b)) Declarations are signed under penalty of perjury by someone who has personal knowledge of the facts stated in the declaration. All references to exhibits in the declarations must reference the number or letter designation of the exhibit, the specific page, and, if applicable, the paragraph or line number. (C.R.C., Rule 3.1113(l))

- 1▶ Begin with line 1 and type the title in all caps, underlined, "DECLARATION OF (NAME) IN SUPPORT OF (TITLE OF MOTION)." (C.R.C., Rule 3.1115)
- 2▶ Type the name of the declarant in all caps.
- 3▶ Type the body in standard numbered paragraph form until you get to the "I declare" paragraph, which is not numbered.
- 4▶ Skip down two double spaces and type a solid line with the declarant's name in all caps below.
 - In the interests of brevity, we do not include Exhibit "A."

§ 6.3.4 **Separate Statement** (not shown)

C.R.C., Rule 3.1345(a) requires any motion involving the content of a discovery response (i.e., a motion to compel further answers as opposed to a motion to compel where no response was received) to be accompanied by a separate statement. The separate statement must contain the items listed in C.R.C., Rule 3.1345(c), among them: the specific discovery request, the response given, the factual and legal reasons for compelling further response, etc. The purpose of the separate statement is to obviate the need to review any other document in order to determine the full request and the full response.

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§ 6.3.7 Opposing the Motion/Replying to the Opposition

The opposing attorney may file and serve P's & A's in opposition to the motion at least **9 court days** prior to the date of hearing on the motion. The moving party may then file and serve P's & A's in reply to the opposition at least **5 court days** prior to the date of hearing on the motion. (C.C.P. § 1005(b))

IF YOU ARE SERVED WITH A MOTION, BE SURE TO CALENDAR:

- the date and time of the hearing
- the deadlines for filing and serving 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)

An opposition to a motion and a reply to an opposition follow the same format, except the opposition is limited to 15 pages, and the reply is limited to 10 pages. (C.R.C., Rule 3.1113)

- 1▶ Type the caption as on previous pleadings.
 - 2▶ The title is "POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR . . ." or "POINTS AND AUTHORITIES IN REPLY TO OPPOSITION TO MOTION FOR . . ." and reference to declarations, if any. The footer is an abbreviation of the title. (C.R.C., Rule 2.110) If the attorney plans to appear telephonically (see § 6.3.10), type "Telephone Appearance" immediately below the title of the document.
 - 3▶ Type below the title the same information contained below the title of the motion (date, time, place, etc.).
 - 4▶ Type the body of the P's & A's, beginning just below the bracketed caption, in the same format described in "Memorandum of Points and Authorities," above. Type the date and signature line (with "Respectfully submitted") as described for the P's & A's in support of the motion (§ 6.3.2)
- Prepare any exhibits and declarations as discussed in §§ 6.3.3 and 6.3.5.

Points and Authorities in Opposition to Motion

1▶	1	DEBORAH SMITH, ESQ. (SBN #1134685)	
	2	1000 Colorado Boulevard	
	3	Suite 555	
	4	Los Angeles, California 90001-1234	
	5	Telephone: 213.205.1234	
	6	Facsimile: 213.205.1235	
	7	Email: D.Smith@smithlawyerslaw.com	
	8	Attorney for Defendant	
	9	JAMES A. WRONGDOER	
	10		
	11	FRED A. WRONGED,	Case No. C 126447
	12	Plaintiff,	2▶ POINTS AND AUTHORITIES IN
	13	vs.	OPPOSITION TO MOTION FOR
	14	JAMES A. WRONGDOER, and DOES 1	ORDER COMPELLING ANSWERS
	15	through 10, inclusive,	TO PLAINTIFF'S FIRST SET OF
	16	Defendants.	INTERROGATORIES TO
	17		DEFENDANT
	18		3▶ Date: January 5, 1999
	19		Time: 9:00 A.M.
	20		Dept: 83
	21		Judge: Honorable June Justice
	22		Action Filed: August 3, 1998
4▶	23	Defendant, JAMES A. WRONGDOER, hereby submits the following points and authorities	
	24	in opposition to the Motion of FRED A. WRONGED to Compel Answers to Interrogatories.	
	25	I.	
	26	<u>IMPOSITION OF SANCTIONS AGAINST THIS</u>	
	27	<u>RESPONDING PARTY WOULD BE UNJUST</u>	
	28	The Court has discretion with regard to the imposition of sanctions in this matter. In that	
	29	regard, C.C.P. § 2030(k) provides that if a party moves the court for an order compelling a	
	30	response to interrogatories:	
	31	<i>[The P's & A's would continue.]</i>	
2▶	32	<hr/> -1- <hr/> POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO COMPEL ANSWERS	

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§ 6.3.10 Hearing on the Motion

During the hearing, the court may ask the attorneys for oral argument about, or clarification of, the papers submitted by the parties. Where a tentative ruling has been issued, the party against whom the ruling is issued goes first. Where relatively simple or routine matters are involved, the court makes a decision on the spot, and the clerk prepares a “minute order,” briefly stating the ruling. Where more difficult issues are involved, the court might “take the matter under submission.” This means that the court needs more time to consider the matter, re-read points and authorities, read cases, etc. In that event, the court might ask the attorneys to appear in court at a later date for a ruling.

IF YOU INTEND TO APPEAR BY TELEPHONE, PLEASE SEE “TELEPHONE APPEARANCES” BELOW. IF NOT, PROCEED TO THE NEXT SECTION, “NOTICE OF RULING.”

§ 6.3.10.1 Telephone Appearances

Attorneys may always appear at the hearing in person. However, there is a policy in favor of telephone appearances wherever possible in order to improve access to the courts and reduce litigation costs. Telephone appearances require: (a) authority, (b) proper and timely notice, and (c) logistical arrangements.

(a) Authority. C.R.C., Rule 3.670(c) constitutes general authority to appear by telephone on many matters, including trial setting conferences, hearings on law and motion (except motions *in limine*), discovery motions, etc. C.R.C., Rule 3.670(d) lists several exceptions to that general authority, e.g., hearings where witnesses are expected to testify, settlement and trial management conferences, many *ex parte* matters, etc. **Be sure to check the rules to determine whether a telephone appearance is authorized for the particular matter.** The court has discretion to require personal appearances on matters generally allowed by Rule 3.670(c), as well as the power to allow telephone appearances on matters where personal appearances are generally required. (C.R.C., Rule 3.670(e))

(b) Notice. Telephone appearances, where permitted, are allowed by doing any one of the following:

- Type “*Telephone Appearance*” below the title of your moving, opposing, or reply papers. (C.R.C., Rule 3.670(g)(1)(A))
- At least 3 court days before the hearing, notify the court and all other parties of your intent to appear by telephone. Notice may be oral or written. If the notice is in writing, a “Notice of Intent to Appear by Telephone” must be filed with the court and served on all other parties by personal delivery, fax, express mail, or other means reasonably calculated to ensure delivery to the parties no later than the close of the next business day. (C.R.C., Rule 3.670(g)(1)(B)) (See “Notice of Intent to Appear By Telephone” next page.)

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C.R.C., Rule 3.670, which favors telephonic appearances where feasible, generally requires personal appearances in *ex parte* hearings, but allows telephonic appearances when seeking any of the following orders:

- For permission to file a memorandum in excess of the applicable page limits;
- For an extension of time to serve pleadings;
- To set hearing dates on alternative writs and orders to show cause; or
- By stipulation of the parties.

§ 6.4.2 Giving Interested Parties Notice of the *Ex Parte* Application

Once the hearing date and time have been set, you can give notice of the *ex parte* application, which must be given by 10:00 a.m. the day before the hearing. C.R.C., Rule 3.1204(a) requires the notice to include the date, time, and department in which the application will be presented, a specific statement of the nature of the relief being sought, and requires the person giving notice to attempt to determine whether anyone will appear to oppose the application.

- The attorney must decide how much and by what means (written or oral) notice should be given. Good practice is to call, leave a message with a secretary or on voicemail if the attorney is unavailable, and to follow up with a fax confirmation.
- The person who calls the attorney(s) to give notice must be sure to make note of to whom they spoke and exactly what was said by the parties to the call. This information must be included in a declaration which becomes part of the application. If inadequate, and unless reasons are given for failing to give proper notice, the court may refuse to hear the application on an *ex parte* basis.

The next step is to type the application, which begins with a form of declaration.

Ex parte application (page one)

1▶	1	JOE LAWYER, ESQ. (SBN #7756234)	
	2	1000 Colorado Boulevard	
	3	Suite 555	
	4	Los Angeles, California 90001-1234	
	5	Telephone: 213.452.0000	
	6	Facsimile: 213.452.0010	
	7	Email: joe@joelawyerlaw.com	
	8	Attorney for Plaintiff	
	9	FRED A. WRONGED	
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§ 6.5 Demurrers

A demurrer, a responsive pleading which can be filed in addition to an Answer, closely follows the format of a motion. If it is filed in response to a Complaint or Cross-Complaint, it must be filed and served within **30 days** after service of the Complaint or Cross-Complaint. (C.C.P. § 430.40(a)) If it is filed in response to an Answer, it must be filed and served within **10 days** after service of the Answer. (C.C.P. § 430.40(b)) The party on whose behalf the Demurrer is prepared is the "demurring party." The pleading being objected to is "demurred to."

In the Demurrer, a party can object to a pleading or parts thereof on various grounds, among them:

- (1) the pleading fails to state a cause of action or defense or the court lacks subject matter jurisdiction ("general demurrer")
- (2) the pleading is uncertain ("special demurrer")
- (3) another action is pending between the parties for the same cause of action ("special demurrer")
- (4) the plaintiff does not have the legal capacity to sue ("special demurrer") (C.C.P. § 430.10)

NOTE: Special demurrers are not allowed in Limited Civil Cases. (C.C.P. § 92(c))

Just as with regular motions, there is a hearing on a Demurrer, at which time the judge sustains or overrules the Demurrer. If it is sustained, the party who prepared the defective pleading ordinarily is allowed **10 days** to amend it to correct the defects. Within a specified time after the amended pleading is filed, the demurring party must file a response (often, another Demurrer claiming that the defect still exists). On the other hand, if the Demurrer is overruled, the demurring party must file an Answer to the original pleading within **10 days**. (C.R.C., Rules 3.1320(g) and (j))

The parts of a Demurrer are similar in form to those of a regular motion.

§ 6.5.1 "Notice of Hearing"

The Notice of Hearing informs the interested parties when and where the hearing on the Demurrer will be held. The first step is to decide upon a date, time and place for the hearing. See "Notice of Motion," § 6.3.1.

NOTE: C.R.C., RULE 3.1320(d) PROVIDES THAT THE HEARING CANNOT BE MORE THAN 35 DAYS AFTER THE DEMURRER IS FILED OR THE FIRST AVAILABLE COURT DATE THEREAFTER.

THESE LBTN EXCERPTS ARE SEVERAL YEARS OLD AND SHOULD NOT BE RELIED UPON FOR ANYTHING OTHER THAN AS EXAMPLES OF WHAT LBTN CONTAINS AND HOW IT IS ORGANIZED AND WRITTEN.

§ 6.5.2 "Demurrer"

The Demurrer specifies the portions of the pleading demurred to and the grounds therefor.

- 1▶ Type the caption as on previous pleadings.
- 2▶ The title, typed in all caps, includes the name of the party filing the Demurrer, the name of the party whose pleading is the subject of the Demurrer, and all attached documents, such as the P's & A's. (C.R.C., Rule 3.1320(e)) The footer is an abbreviation of the title. (C.R.C., Rule 2.110)
- 3▶ Below the title, type the same information you did on the Notice of Hearing.
- 4▶ Type the body of the Demurrer in numbered, standard paragraph form as described on page 1-10, Step 3.
- 5▶ Each ground of demurrer must be in a separate paragraph stating whether it applies to the entire complaint or specified causes of action. (C.R.C., Rule 3.1320(a))
- 6▶ Type the standard date and signature lines as described in § 1.2.4.

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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.

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§ 6.7.1 Motion for Summary Judgment

§ 6.7.1.1 "Notice of Motion"

The notice of motion follows the same format as a notice in a regular motion (see § 6.3.1). It informs the court and the parties of the nature of, and the grounds for, the order being requested, and the date, time, and place for the hearing. **Setting the hearing on the motion for summary judgment can be very tricky!** You must coordinate: (1) the date the motion will be ready, (2) all three of the following deadlines, and (3) the court's availability.^{4/}

- It may not be brought until **60 days after the opposing party has appeared**.
- It requires **at least 75 days notice**, plus the extra time allotted by C.C.P. § 437c when not personally served.^{5/}
- It must be heard at least **30 days prior to trial**.

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

- the date and time of the hearing
- the deadlines for filing and serving the motion, opposition, reply, and objections to evidence (see table on p. 6-52)
- 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)

§ 6.7.1.2 "Memorandum of Points and Authorities"

- Type the P's & A's in the same format as that for regular motions, § 6.3.2, but remember that **they may contain 20 pages without leave of court**.

§ 6.7.1.3 "Declarations" and "Exhibits"

- Type and tab declarations and exhibits in the same format as that for regular motions (see "Declarations" § 6.3.3, and "Exhibits," § 6.3.5), but note that **C.R.C., Rule 3.1350(g) requires exhibits exceeding 25 pages to be separately bound and to include a table of contents**.

^{4/} Determine the court's availability by calling the calendar clerk in the department where the motion will be heard, or checking their website. It might have to be heard 31 or 32 days prior to the trial date if the court is not available on the 30th day.

^{5/} C.C.P. § 437c(a) contains extensions identical to those under C.C.P. § 1013. The addition of two court days to the 75 calendar days may lead to different results depending upon the order in which the two types of days are counted. Best practice dictates counting both ways and giving the greater notice, or, at the very least, be sure to count forward from the notice date you are considering to make sure you are giving the requisite notice.

Moving Party's Separate Statement of Undisputed Material Facts (page one)

1▶ 1 DEBORAH SMITH, ESQ. (SBN #1134685)
2 2222 West Flower Street
3 Suite 101
4 Los Angeles, California 90234-5130
5 Telephone: (213) 205-1234
6 Facsimile: (213) 205-1235
7 Email: D.Smith@smithlawyerslaw.com

8 Attorney for Defendant
9 JAMES A. WRONGDOER

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES

13 FRED A. WRONGED,
14 Plaintiff,
15 vs.
16 JAMES A. WRONGDOER, and DOES 1
17 through 10, inclusive,
18 Defendants.

Case No. C 126447

2▶ MOVING PARTY'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

3▶ Date: September 30, 2000
Time: 9:00 A.M.
Dept: 83
Judge: Honorable June Justice
Action Filed: August 3, 1998
Trial Date: December 5, 2000

4▶ 19 Defendant, JAMES A. WRONGDOER, hereby submits his Separate Statement of
20 Undisputed Material Facts in Support of his Motion for Summary Judgment.

5▶ 22 Moving Party's Undisputed Material Facts
23 and Supporting Evidence:

Opposing Party's Response and Supporting Evidence:

- 24 1. Police officer David Green witnessed
25 the accident.
26 D. Green deposition, p. 12, lines 4-
18; Exh. A.

27 ///

28 ///

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§ 6.7.1.8(b) Written Objections to Evidence

The following rules are effective January 1, 2007 (see C.R.C., Rule 3.1354 for full details):

- ✓ Unless otherwise excused by the court, all written objections to evidence in support of or in opposition to a motion for summary judgment or summary adjudication must be in a separate document.
- ✓ Each objection must be numbered consecutively.
- ✓ **The objections must be served and filed at the same time as the objecting party's opposition or reply papers are served and filed.**
- ✓ Each objection must: (a) identify the name of the document in which the specific material objected to is located; (b) state the exhibit, title, page, and line number of the material objected to; (c) quote or set forth the objectionable statement or material; and (d) state the grounds, including legal authority, for each objection to that statement or material.
- ✓ The objections to evidence must follow one of two specific formats, as follows:

Rule Changes Effective 1/1/07
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(First Format for Objections to Evidence)

<p style="text-align: center;"><u>Objections to Jackson Declaration</u></p> <p style="text-align: center;"><u>Objection Number 1</u></p> <p>“Johnson told me that no widgets were ever received.” (Jackson declaration, page 3, lines 7-8.)</p> <p>Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).</p> <p style="text-align: center;"><u>Objection Number 2</u></p> <p>“A lot of people find widgets to be very useful.” (Jackson declaration, page 17, line 5.)</p> <p>Grounds for Objection 2: Irrelevant (Evid. Code, §§ 210, 350-351).</p>
