

Summary Judgment - General Motion Requirements

- **Documents to prepare.** The moving party generally prepares the following documents:
 - **motion** (typically combined with the notice of motion); notice of motion (Cal. Civ. Proc. Code § 1010; Cal. Rules of Court, rule 3.1350(c)(1));
 - **memorandum of points and authorities** (Cal. Rules of Court, rule 3.1113 and 3.1350(c)(3));
 - **separate statement of undisputed material facts** (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1350(c)(2), (d));
 - **declarations** (Cal. Rules of Court, rule 3.1112(b)); evidence (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1350(c)(4));
 - **request for judicial notice** (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1306(c) and 3.1350(c)(5));
 - **proposed order or judgment** (may be lodged and served with moving papers but not attached to them) (Cal. Rules of Court, rule 3.1113(m) and 3.1312); and
 - **proof of service** (typically filed with the moving papers, but counsel need not do so until five court days before the hearing under California Rules of Court, rule 3.1300(c)).
- **Combined or separate.** Counsel may combine the various papers that constitute the “motion” or file them separately (Cal. Rules of Court, rule 3.1112(c)).

- **Combined motion papers.** Identify each combined paper separately in the caption (Cal. Rules of Court, rule 3.1112(c)). Documents must be consecutively paginated (Cal. Rules of Court, rule 3.1110(c)). For combined motion papers, the numbering system should begin with the anchor document (such as the notice of motion and motion) and run consecutively through the last document of the package (such as a declaration or exhibits).
- **Separate motion papers.** If papers are filed separately, at the bottom of the right column of the caption page attorneys commonly list all the other documents “filed concurrently” with the motion. Documents filed separately should be paginated separately.

Motion

- **Contents.** The motion must:
 - identify the party or parties bringing the motion;
 - name the parties to whom it is addressed; and
 - briefly state the basis for the motion and the relief sought. (Cal. Rules of Court, rule 3.1112(d).)

Notice of Motion

- **Contents.** The opening paragraph of the notice of motion must state:
 - when the motion will be made;
 - the grounds for issuance of the order or judgment;
 - the nature of the order or judgment being sought; and
 - the papers on which the motion is based. (Cal. Rules of Court, rule 3.1110(a); Cal. Civ. Proc. Code § 1010.)

- **Relief sought.** State whether the motion is for summary judgment, summary adjudication (meaning the movant seeks a dispositive ruling on specific claims, defenses, issues, or punitive damages not resulting in entry of judgment), or both. Attorneys typically bring a motion for summary adjudication in the alternative when bringing a motion for summary judgment (Cal. Civ. Proc. Code § 437c(f)(2)).

- **Summary adjudication.** When seeking summary adjudication:
 - specifically state the contested causes of action, affirmative defenses, claims for damages, or issues of duty in the notice of motion (Cal. Rules of Court, rule 3.1350(b)).

 - on a legal issue or claim for damages (other than punitive damages) that does not completely dispose of a cause of action, affirmative defense, or issue of duty, include the following notice after receiving court permission to file the motion: “This motion is made pursuant to subdivision (t) of Section 437c of the Code of Civil Procedure. The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.” (Cal. Civ. Proc. Code § 437c(t)(4).)

- **Hearing date.** Reserve a hearing date with the court in advance of filing the notice of motion. Motions for summary judgment or summary adjudication must be noticed 75 days before the hearing date (plus additional time depending on the service method, if applicable). Check scheduling orders in a particular case that might dictate the hearing and scheduling of motions for summary judgment or summary adjudication. (Cal. Civ. Proc. Code § 437c(a)(1), (2).)

Memorandum of Points and Authorities

- **General requirement.** A memorandum of points and authorities must accompany every notice of motion except those listed in California Rules of Court, rule 3.1114(a) (Cal. Rules of Court, rule 3.1113(a)).
- **Contents.** The memorandum must include:
 - a statement of facts;
 - a concise statement of the law, evidence, and arguments relied on; and
 - a discussion of statutes, cases, and textbooks cited. (Cal. Rules of Court, rule 3.1113(b).)
- **Page limits.** The memorandum in support of a motion for summary judgment or summary adjudication, or both, may not exceed 20 pages in length without leave of court. No reply or closing memorandum may exceed ten pages. (Cal. Rules of Court, rule 3.1113(d), (e).) The page limit does not include the caption page, notice of motion and motion, exhibits, declarations, attachments, table of contents, table of authorities, or proof of service (Cal. Rules of Court, rule 3.1113(d)).
- **Tables of contents and authorities.** A memorandum exceeding ten pages must include a table of contents and a table of authorities (Cal. Rules of Court, rule 3.1113(f)).
- **Summary of argument.** A memorandum that exceeds 15 pages must include an opening summary of argument (Cal. Rules of Court, rule 3.1113(f)).
- **Page numbering.** A memorandum must be paginated consecutively, beginning with the first page and using only Arabic numerals (for example, 1, 2, 3). The page number may be suppressed and need not appear on the first page. (Cal. Rules of Court, rule 3.1113(h).)

- **Case citations.** The memorandum must follow consistently either the “California Style Manual” or “The Bluebook” (Cal. Rules of Court, rule 1.200). Case citations must be to the Official Reports (“Cal.” and “Cal. App.”) (Cal. Rules of Court, rule 3.1113(c)). Special rules apply to citing unpublished decisions (Cal. Rules of Court, rule 3.1113(i)(2))
- **Exhibit and declaration citations.** The memorandum must cite exhibits and declarations by:
 - number or letter;
 - page number; and
 - specific paragraph or line number, if applicable.
(Cal. Rules of Court, rule 3.1113(k).)
- **Copies of authorities.** See local rules and the individual judge’s rules regarding any requirement to prepare an Appendix of Other Authorities identifying and attaching full copies of any referenced out-of-state cases cited within the moving papers (Cal. Rules of Court, rule 3.1113(i)(1); Cal. Rules of Court, rule 3.1113(i)(2) (citations to California authority before the time it is published)). If required, a copy of the authority must be lodged with the papers that cite the authority and tabbed or separated as required by California Rules of Court, rule 3.1110(f).
- **Attachment.** If possible, attach the memorandum to the notice of motion (Cal. Rules of Court, rule 3.1113(j)).

Separate Statement of Undisputed Material Facts

- **Requirement.** A party filing a motion for summary judgment or summary adjudication must file a separate statement of undisputed material facts in support of the motion (Cal. Rules of Court, rule 3.1350(c)(2); Cal. Civ. Proc. Code § 437c(b)(1)).

- **Title.** The document should be captioned: “Separate Statement of Undisputed Material Facts in Support of [NAME’S] Motion for Summary Judgment [or, in the Alternative, for Summary Adjudication]” or similar (Cal. Rules of Court, rule 3.1350(c)(2); Cal. Prac. Guide Civ. Pro. Before Trial Ch. 10-C, 10:96).

- **Format.** The separate statement should be formatted as a two-column chart (Cal. Rules of Court, rule 3.1350(h)). Note that:
 - the left-side column should be entitled “Moving Party’s Undisputed Material Facts and Supporting Evidence”;
 - the right-side column should be entitled “Opposing Party’s Response and Supporting Evidence” (leave the right-side column blank for the opposing party to complete);
 - the moving party should list, in numerical sequence in the left-side column, each material fact it claims is undisputed (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1350(d)(3)); and
 - directly following each material fact, in the same column, the moving party should cite to the supporting evidence establishing the undisputed fact (citations to evidence in support of each material fact must include a reference to the exhibit, title, page, and line numbers) (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1350(d)(3)).

- **Summary adjudication.** If moving for summary adjudication, the specific cause of action, affirmative defense, claim for damages, or issue of duty that was stated in the notice of motion must be repeated, verbatim, in the separate statement of undisputed material facts. Include:
 - a title above the two columns, identifying as a separate issue each cause of action, claim for damages, issue of duty, or affirmative defense that is the basis for the motion (for example,

“ISSUE 1: The First Cause of Action for Negligence Is Barred Because Plaintiff Expressly Assumed the Risk of Injury”); and

- for each additional issue on which the motion is based, another title and chart with two columns. Do not incorporate by reference the facts from the prior issue; instead, restate them in each chart for each issue.

(Cal. Civ. Proc. Code § 437c(f); Cal. Rules of Court, rule 3.1350(b).)

- **Electronic version.** If requested by the opposing party, the movant must, within three days, provide an electronic version of the separate statement of undisputed material facts to use in preparing the opposing party’s separate statement of undisputed material facts (Cal. Rules of Court, rule 3.1350(i)).

Declarations

- **Caption.** The caption must:
 - include the name of the declarant; and
 - indicate the motion that the declaration supports.
(Cal. Rules of Court, rule 3.1115.)
- **Certification.** A declaration must contain the certification set out in Section 2015.5 of the California Code of Civil Procedure.
- **Signature.** The declaration must be signed and dated by the declarant (Cal. Civ. Proc. Code § 2015.5).
- **Attachment.** If possible, attach the declaration to the notice of motion (Cal. Rules of Court, rule 3.1113(j)).

Evidence

- **Requirement.** A party moving for summary judgment or summary adjudication must serve and file evidence, such as affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken (Cal. Civ. Proc. Code § 437c(b)(1)).

- **Authentication.** Evidence submitted in support of summary judgment or summary adjudication typically is authenticated by a declaration or affidavit that is filed with the motion papers certifying that each exhibit is a true and correct copy of what it purports to be (Cal. Civ. Proc. Code § 437c(d)). An authenticating declaration or affidavit generally must:
 - be made on personal knowledge;
 - state admissible evidence;
 - show the affiant or declarant is competent to testify on the matters stated; and
 - contain only evidentiary facts, not conclusions.
(Cal. Civ. Proc. Code § 437c(d); *Guthrey v. State of California*, 63 Cal. App. 4th 1108, 1119-20 (1998); Cal. Prac. Guide Civ. Pro. Before Trial Ch. 10-C, 10:118.)

- **Binding.** For motions filed on paper, bind all pages of the exhibits at the top by a method that permits pages to be easily turned and the entire content of each page to be read (Cal. Rules of Court, rule 3.1110(e)). Remember to attach the exhibits to the associated declaration or other anchor document.

- **Tabs.** Each paper exhibit must be separated by an 8.5 by 11 inch hard sheet with hard paper or plastic tabs extending below the bottom of the page, bearing the exhibit designation (Cal. Rules of Court, rule 3.1110(f)(3)).

- **Electronic bookmarks.** Unless they are submitted by a self-represented party, electronic exhibits must include electronic bookmarks with links to the first page of each exhibit and with bookmark titles that identify the exhibit number or letter and briefly describe the exhibit (Cal. Rules of Court, rule 3.1110(f)(4)).
- **Index.** Provide an index (a list of exhibits in numerical or alphabetical order) to the exhibits. The index must briefly describe the exhibit and identify the exhibit number or letter and page number. (Cal. Rules of Court, rule 3.1110(f)(1).)
- **Separately bound volume.** If evidence in support of a motion for summary judgment or summary adjudication exceeds 25 pages, it must:
 - be separately bound; and
 - include a table of contents.
(Cal. Rules of Court, rule 3.1350(g).)
- **Page numbering.** Counsel should consecutively paginate all exhibits (Cal. Rules of Court, rule 3.1110(c)). Counsel should continue the pagination in sequential order from the preceding document.
- **Deposition transcripts.** Designate as a single exhibit any pages from a deposition and exhibits associated with the deposition (Cal. Rules of Court, rule 3.1110(f)). Exhibits with deposition testimony must contain:
 - the title page of the deposition that states the name of the deponent and the date of the deposition;
 - only the relevant pages of the transcript, with the original deposition page numbers visible; and
 - the relevant parts of the testimony highlighted, bracketed or marked in some other manner.
(Cal. Rules of Court, rule 3.1116.)

- **Translation of exhibits.** Exhibits written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter (Cal. Rules of Court, rule 3.1110(g)).
- **Fastening.** Exhibits submitted with papers not filed electronically may be fastened to pages of the specified size and, when prepared by a machine copying process, must be equal to computer-processed materials in legibility and permanency of image (Cal. Rules of Court, rule 2.114).

Request for Judicial Notice

- **Permitted.** A motion for summary judgment or summary adjudication may be supported by judicially noticed matters (Cal. Civ. Proc. Code § 437c(b)(1); Cal. Rules of Court, rule 3.1306(c) and 3.1350(c)(5); Cal. Evid. Code §§ 451 to 453).
- **Format.** A request for judicial notice must be a separate document identifying the specific items for which judicial notice is requested (Cal. Rules of Court, rule 3.1113(l)). A party requesting judicial notice under Sections 452 or 453 of the California Evidence Code must provide the court and each party with a copy of the material (Cal. Rules of Court, rule 3.1306(c)). If the material is part of a file in the court in which the matter is being heard, the party must:
 - specify in writing the part of the court file sought to be judicially noticed; and
 - either arrange with the clerk to have the file in the courtroom at the time of the hearing or confirm with the clerk that the file is electronically accessible to the court.
(Cal. Rules of Court, rule 3.1306(c).)
- **Local rules.** Check local court rules that may have requirements regarding attaching copies of documents to be judicially noticed as

exhibits to the request or lodging copies of the court file with the court before the hearing.

Proposed Order or Judgment

- **Permissive.** California permits, but does not require, counsel to submit a proposed order or judgment with the motion papers. Check local court rules that may have specific requirements for the filing of proposed orders or proposed judgments.
- **Attachment.** Do not attach the proposed order or judgment to the motion papers (Cal. Rules of Court, rule 3.1113(m) and 3.1312). If submitted, the proposed order or judgment must be separately lodged and served with the motion papers.
- **Filing with reply papers.** If local rules do not require otherwise, counsel should consider filing a proposed order or judgment with the reply papers so that it addresses all evidence, including evidence submitted by the opposing party (Cal. Prac. Guide Civ. Pro. Before Trial Ch. 10-C, 10:185.1 to 10:185.2).
- **Contents of proposed order or judgment.** The order or judgment granting a motion for summary judgment or summary adjudication on the ground that there is no triable issue of material fact must comply with the requirements of California Civil Procedure Code Section 437c(g). The moving party's proposed order or judgment typically contains:
 - a caption (see Caption);
 - a title, such as “[Proposed] Order [or Judgment] Granting [PARTY NAME’S] Motion for Summary Judgment”;
 - an introductory paragraph stating the date, time, department where the hearing took place, the presiding judge’s name, and the names of all attorneys present and whom they represented;

- language granting the relief sought;
- the reasons for determining there is no triable issue of material fact and specific references to the evidence in support of and in opposition to (if applicable) the motion which indicate that no triable issue exists;
- language that judgment shall be awarded in favor of the moving party and against the opposing party (if a proposed judgment); and
- a blank signature line for the judge.
(Cal. Civ. Proc. Code § 437c(g); Cal. Rules of Court, rule 3.1312; Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(I)-B, 9:81.2; Cal. Prac. Guide Civ. Pro. Before Trial Ch. 9(I)-E, 9:300.)

Proof of Service

- **Requirement.** It is typical to file the proof of service with the motion papers, but this is not a requirement. Counsel must file the proof of service at least five court days before the hearing date (Cal. Rules of Court, rule 3.1300(c)).
- **Attachment.** The proof of service can be filed as a separate document, attached at the end of the motion package (if combined together), or behind each document (if filing the motion and supporting papers separately).