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Civil Lawsuit Basics: Motions for Summary Judgment



Presented by
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Executive Director
LA Law Library
October 22, 2016



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Also, this class is limited to general civil cases in California state court.



Topics Covered

Basics of:

- Motions for Summary Judgment
- Motions for Judgment on the Pleadings
- Motions for Summary Adjudication

These motions are complicated and this class cannot cover everything.

It's a 'starter' course.



What Is a Motion for Summary Judgment (MSJ)?

- A set of written documents that asks the court to enter judgment in your favor
- Special kind of motion
- Supported by admissible evidence

Consider other *Civil Lawsuit Basics* classes:

- Making and Opposing Motions
- Discovery
- Presenting Evidence



MSJs – Why?

- Resolves case early
- Saves time & costs of going to trial
- Compels disclosure of evidence
- Facilitates trial preparation
- Witnesses more likely to be cooperative signing declarations than going to court
- Aids settlement by exposing weaknesses



MSJs – Why Not?

- Expensive
- Time-consuming
- Tips your hand early giving opponent time to respond to your evidence or fill in their case
- Documents can be used against you later
- De novo review on appeal



When Is an MSJ Appropriate?

Under Code of Civil Procedure (CCP) § 437c, an MSJ may be brought where the lawsuit “has no merit or...there is no defense” to the claims.

This means where one side is entitled to judgment based on *undisputed* facts

No weighing facts

No “he said-she said”



When Is an MSJ Appropriate?

- CCP437c(c)(8) further states:

A motion for summary judgment “**shall be granted** if all the papers submitted show that there is **no triable issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law.”



When Is an MSJ Appropriate?

When an *element* is missing or all *elements* can be proven with undisputed facts

- Cause of action have *elements* which the plaintiff must prove in order to prevail
- Defenses have *elements* which the defendant must prove to establish the defense



When Is an MSJ Appropriate?

Research first: which elements do you need to prove or disprove? Can you do it with undisputed facts?

Note: For an MSJ you can only use legal theories that were pled in the Complaint and Answer. Even if there is a different legal theory that would help you, if it wasn't pled, it doesn't count.



MSJ by Defendant

An MSJ is appropriate for the defendant where: the undisputed facts show that the plaintiff cannot prove at least one required *element* of the cause of action. Or, where the undisputed facts show that a *defense* applies.



MSJ by Plaintiff

An MSJ is appropriate for the plaintiff where: the undisputed facts show that the elements of each cause are satisfied, and no defense raised by the defendant applies

Question: Which kind of MSJ is more common: defendant or plaintiff? Why?



Examples



Mary, a shop owner, sued Joe for **breach of contract** for failing to deliver 1,000 “I Love LA” t-shirts as promised. *Discovery* revealed Mary bought replacement t-shirts at the same price from someone else without any loss to her business.*

*Example from: Nolo, *Represent Yourself in Court*

Can Joe bring a summary judgment motion?



Examples: Mary & Joe, cont.



What if Mary said the replacement t-shirts were a polyester blend, Joe had promised cotton, and sales suffered as a result?

Can Joe bring an MSJ?

Can Mary?



Examples

Patty's Doctor botched her surgery and left her unable to use her right hand for the rest of her life. Six years later, she sued Doctor for negligence. Doctor asserted the Statute of Limitations as a defense, claiming Patty waited too long to bring her lawsuit.

Can Doctor bring an MSJ? What if Doctor hadn't asserted the defense in his Answer?



Examples

Same facts but Patty sued right away.
Doctor hires a world-renowned expert
from Harvard Medical School to testify
Doctor did nothing wrong.

Patty has no expert, but one of the nurses
says she heard Doctor say “Oops” when
he was operating on her hand.

Can Doctor get summary judgment?



Disputed Facts

If any *weighing of evidence* is necessary to decide your case, summary judgment is not appropriate.

TIP: When opposing an MSJ, try to show why weighing the evidence is necessary to decide the case.



What Is Summary Adjudication?

Summary Adjudication is used when only **some** of the issues can be resolved without trial

Also called partial summary judgment



Summary Adjudication

Summary Adjudication is only available for certain kinds of issues.

Can get SA as to one or more:

- causes of action,
- affirmative defenses,
- claims for damages, or
- issues of duty

CCP § 437c(f)



Summary Adjudication

Exception: Stipulation of the Parties

Summary adjudication available for **specific issues** that do not entirely dispose of a cause of action, defense, or issue of duty, *if the other side agrees by signed stipulation.*

Why would parties agree?



Summary Adjudication

Why? Why Not?

Same reasons as MSJ

Additional benefits:

- Narrow scope of trial

- Shorten trial– fewer issues, witnesses, etc

- Reduce cost of trial

- Aid in settlement.



Summary Adjudication Procedure

Same as summary judgment

Can ask for both in same motion

If you do not specifically ask you are not entitled to summary adjudication even if the facts support it

TIP: Don't forget to ask for Summary Adjudication as an alternative in your MSJ. Court might not grant as to the whole case, but might rule for you on one piece of the case



Examples

1. Plaintiff brought tort and contract causes of action, but there was no contract
2. Doctor says he didn't owe Patty a duty of care, but she can establish based upon undisputed facts he operated on her
3. One of the causes of action has a shorter statute of limitations than the others
4. Plaintiff seeks punitive damages against a government agency



Timing of Summary Judgment

IMPORTANT DEADLINES

Service: at least **75 days** before **hearing**

Court cannot shorten without parties' consent

Hearing: at least **30 days** before **trial**

New trial date changes deadline

Motion made at least **60 days** after **first appearance** by opposing party



Timing of Summary Judgment

Service periods are extended even more if serve:

- By fax or overnight delivery: add **2 days**
- By regular mail within CA: add **5 days**
- By regular mail in U.S. outside CA: add **10 days**
- By regular mail outside U.S.: add **20 days**

TIP: Upon receipt of an MSJ, check the timing!



Timing of Summary Judgment

Trick Question: How many days before trial do you have to make your motion?

Courts can be backlogged. What if they don't give you the hearing date you requested?

Motion hearings for most judges in L.A. are scheduled online through the Court Reservation System at www.lacourt.org.



Anatomy of an MSJ/MSA

Must include ALL of these parts:

1. Notice of Motion and Motion
2. Memorandum of Points & Authorities
3. Separate Statement of Material Facts
4. Evidence

You can find templates for each of these in the practice guides. Samples are also in the handouts.



Notice of Motion and Motion

It's a short document that sets out the time, date, and place of the hearing, and briefly states the basis of the motion.

Purpose: formally ask the court to grant judgment in your favor and give other parties notice what you are asking for



Notice of Motion and Motion Requirements

Same as any other motion, must include the:

Time, date and place of hearing;

Specific order or judgment sought;

-against which parties; which causes of action or defenses; for MSA which issues

Grounds on which motion is made; and

Documents or evidence relied upon.

[CCP § 1010]



Example

PLEASE TAKE NOTICE that on June 1, 2011 at 8:45 a.m., or as soon thereafter as this matter may be heard in Department 14 of the above-entitled Court, the Honorable Terry A. Green presiding, Defendants California Science Center Foundation (the "Foundation") and Jeffrey Rudolph, individually and in his official capacity as President of the Foundation ("Rudolph") (collectively, the "Foundation Defendants"), will and hereby do move this Court for an order granting summary adjudication in favor of the Foundation Defendants and against Plaintiff American Freedom Alliance ("AFA") on the claims asserted by AFA under the United States Constitution and the California Constitution.

The motion is made pursuant to California Code of Civil Procedure Section 437c(f), on the grounds that there are no triable issues of material fact and the Foundation Defendants are entitled to judgment as a matter of law. The Foundation Defendants will move for summary adjudication of the following issues:

ISSUE NO. 1: AFA's Second, Third, Fourth, Eighth, and Ninth Causes of Action are incapable of proof as a matter of law because there is no evidence that the Foundation Defendants were state actors and therefore AFA cannot meet an essential element to support each of these causes of action.

ISSUE NO. 2: AFA's Second, Third, Fourth, Eighth, and Ninth Causes of Action are incapable of proof as a matter of law because there is no evidence that the Foundation Defendants engaged in intentional discrimination and therefore AFA cannot meet an essential element to support each of these causes of action.

Date, time, location

"Move" the court, i.e., ask judge to enter an order

Legal basis of motion – basic statement of law on summary judgment/adjudication

Causes of action CSC seeks summary adjudication against, and reasons why



1 This Motion is made upon this Notice, the Memorandum of Points and Authorities, the
2 Separate Statement of Undisputed Material Facts, the Declaration of Jeremy S. Ochsbein, the
3 Declaration of Jeffrey N. Rudolph, the Declaration of Cynthia Pygin, the appendix of non-California
4 authorities, all pleadings, records and files in this action, and such oral argument and evidence which
5 is presented at the hearing on this Motion.

6 DATED: March 15, 2011 GIBSON, DUNN & CRUTCHER LLP

7
8 By: *Patrick W. Dennis*
9 Patrick W. Dennis

10 Attorneys for Defendants,
11 CALIFORNIA SCIENCE CENTER FOUNDATION
12 and JEFFREY RUDOLPH, individually and in his
13 official capacity as President of the California Science
14 Center Foundation

Example cont'd

Other bases of motion – all of the supporting papers, plus the pleadings and any evidence presented at hearing.

Want to include everything permissible here just in case.



Memorandum of Points & Authorities

This is where you make your **argument**, stating why the law supports granting summary judgment in your case.

- Good source for sample P&A's for summary judgment: *California Points & Authorities*, ch. 221 (also available on Lexis).

No minimum requirement; just need to be persuasive; no more than 20 pages!

Called “P’s & A’s”



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 individually and in his official capacity as President
 of the California Science Center Foundation

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

MAR 15 2011

John A. Clarke, Executive Officer/Clerk
 BY Mary Flores, Deputy

SUPERIOR COURT, STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES
 CENTRAL DIVISION

AMERICAN FREEDOM ALLIANCE, a
 nonprofit corporation;

Plaintiff,

v.

CALIFORNIA SCIENCE CENTER; a legal
 entity of the State of California; CALIFORNIA
 SCIENCE CENTER FOUNDATION, a
 nonprofit corporation; JEFFREY RUDOLPH, an
 individual; and DOES 1 through 50, inclusive;

Defendants.

CASE NO. BC 423687

Assigned to: Hon. Terry A. Green, Dept. 14

**DEFENDANTS CALIFORNIA SCIENCE
 CENTER FOUNDATION'S AND JEFFREY
 RUDOLPH'S (AS PRESIDENT OF THE
 FOUNDATION AND IN HIS INDIVIDUAL
 CAPACITY) MEMORANDUM OF POINTS
 AND AUTHORITIES IN SUPPORT OF
 MOTION FOR SUMMARY
 ADJUDICATION ON AMERICAN
 FREEDOM ALLIANCE'S CLAIMS
 ASSERTED UNDER THE UNITED STATES
 CONSTITUTION AND CALIFORNIA
 CONSTITUTION**

[Separate Statement, Notice of Motion and Motion;
 Appendix of Non-California Authorities; Declaration of
 Jeremy S. Ochsenbein; Declaration of Jeffrey N.
 Rudolph, Declaration of Cynthia Pygin; and [Proposed]
 Order filed concurrently herewith]

DATE OF FILING
 OF ORIGINAL
 COMPLAINT: October 14, 2009
 DATE OF FILING OF
 THIRD AMENDED
 COMPLAINT: August 18, 2010
 TRIAL DATE: July 25, 2011
 HEARING DATE: June 1, 2011
 HEARING TIME: 8:45 a.m.
 HEARING PLACE: Dept. 14

DEFENDANTS CALIFORNIA SCIENCE CENTER FOUNDATION'S AND JEFFREY RUDOLPH'S MOTION FOR SUMMARY
 ADJUDICATION REGARDING AFA'S CAUSES OF ACTION FOR VIOLATIONS OF THE UNITED STATES CONSTITUTION
 AND CALIFORNIA CONSTITUTION

Example

Standard caption
 page

General rules in
 California Rules of
 Court, rule 3.1113.
 Read this rule before
 preparing P's & A's



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P's & A's

Table of Contents

Required if > 10 pages
CRC 3.1113(f)

Standard structure:

- (I) introduction,
- (II) statement of facts
- (III) standard of review
- (IV) argument
- (V) conclusion



P's & A's

Table of authorities

Also required if > 10
pages *CRC 3.1113(f)*

Lists every case,
statute, rule, and
other legal authority
you rely on



Cases

	<u>Page(s)</u>
<i>Aguilar v. Atlantic Richfield Co.</i> (2001) 25 Cal.4th 826	2, 4, 5
<i>Albright v. Longview Police Dept.</i> (5th Cir. 1989) 884 F.2d 835.....	7
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<i>Blum v. Yaretsky</i> (1982) 457 U.S. 991	6, 7, 10
<i>Brentwood Academy v. Tennessee Secondary School Athletic Assn.</i> (2001) 531 U.S. 288	passim
<i>Burton v. Wilmington Parking Authority</i> (1961) 365 U.S. 715.....	7, 8
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<i>Caviness v. Horizon Community Learning Center, Inc.</i> (9th Cir. 2010) 590 F.3d 806.....	9, 12, 13
<i>Clark v. County of Placer</i> (E.D. Cal. 1996) 923 F.Supp. 1278.....	14
<i>Crissman v. Dover Downs Entertainment Inc.</i> (3d Cir. 2002) 289 F.3d 231	11
<i>Cunningham v. Southlake Ctr. for Mental Health, Inc.</i> (9th Cir. 1991) 924 F.2d 106.....	10
<i>Edelstein v. City and County of San Francisco</i> (2002) 29 Cal.4th 164	17
<i>Flagg Bros., Inc. v. Brooks</i> (1978) 436 U.S. 149.....	8
<i>Gallagher v. "Neil Young Freedom Concert"</i> (10th Cir. 1995) 49 F.3d 1442.....	5, 7, 8
<i>Gallo Cattle Co. v. Kawamura</i> (2008) 159 Cal.App.4th 948	6
<i>George v. Pacific-CSC Work Furlough</i> (9th Cir. 1996) 91 F.3d 1227.....	9
<i>Gilbrook v. City of Westminster</i> (9th Cir. 1999) 177 F.3d 839.....	17

P's & A's: Introduction

Briefly state the “essence” of your case and why summary judgment is appropriate. Keep it short!

Avoid inflammatory remarks (Remember: the judge is looking for *undisputed* facts...)

Do not assert anything you will not prove in your motion

(May want to write this last so you know exactly what the papers contain.)



P's & A's

Statement of Facts

Briefly state what happened in the case.

State only things you can prove with undisputed facts & cite the Separate Statement for each fact

TIP: Write Separate Statement and copy facts into P's & A's

Keep it as simple and to the point as possible

Judges have limited time

The more complicated it looks, the more it looks like it should go to trial

TIP: Chronological order usually works



P's & A's: Legal Standard

Give the court the legal standard that is applied on summary judgment/adjudication.

Sometimes called Standard of Review

There are lots of great forms and resources for this section of the P's & A's

III. STANDARD OF REVIEW

Summary adjudication is appropriate because AFA lacks the evidence necessary to prove certain claims alleged in its complaint. "A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion." (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819.) A defendant will prevail on summary judgment if it can show that one or more elements of a plaintiff's cause of action, even if not separately pleaded, cannot be established. (Cal. Code Civ. Proc. § 437c, subd. (p)(2).) A defendant does not have to conclusively negate an element of the plaintiff's cause of action in order to be entitled to summary judgment, but must only "show that the plaintiff *does not possess* needed evidence . . . [and] that the plaintiff *cannot reasonably obtain* needed evidence." (*Aguilar, supra*, 25 Cal.4th at pp. 853–54, emphasis in original.)

The absence of evidence can be shown by deposition testimony from plaintiff's witnesses indicating lack of knowledge regarding certain elements (*Leslie G. v. Perry & Assocs.* (1996) 43

The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Memo of P's & A's: Argument

This is the section where you explain why the law, applied to the facts in your case, justifies summary judgment.

Need to cite cases and statutes when stating the law, and cite the evidence when making a factual statement. *The judge is not obligated to find support for your statements.*

Burden of Proof: Beyond the scope of this class. Typically, the burden of proof is a “preponderance of the evidence.” The moving party bears the burden of persuasion and the initial burden of production of evidence.



Memo of P's & A's

Conclusion & Signature

13
14
15
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23

V. CONCLUSION

For the foregoing reasons, the Foundation and Jeffrey Rudolph, individually and in his official capacity as President of the Foundation, respectfully request that the Court grant the instant Motion.

DATED: March 15, 2011

GIBSON, DUNN & CRUTCHER LLP

By: *Patrick W. Dennis*
Patrick W. Dennis

Attorneys for Defendants CALIFORNIA SCIENCE CENTER FOUNDATION and JEFFREY RUDOLPH individually and in his official capacity as President of the California Science Center Foundation

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“For all the foregoing reasons.... Respectfully request that the Court grant the instant Motion.”

Rarely needs to be more complicated than this.



Separate Statement of Material Facts

A required chart showing **each** material fact, with references to evidence.

Critical roadmap for the judge!

Evidence must be admissible and undisputed

Do not add disputed evidence



Separate Statement of Material Facts

- Two columns: one for moving party's facts, one for opposing party's response.
- Each fact is stated briefly and numbered .
- Each fact is supported with a reference to the evidence included with the motion.

[*This column left blank for opposing party to complete & submit with its opposition.*]

<p>9 <i>Moving Party's Undisputed Material Facts and Supporting Evidence:</i></p>	<p>9 <i>Opposing Party's Response and Supporting Evidence:</i></p>
<p>11 Issue No. 1:</p> <p>12 The Center is Entitled to Judgment on AFA's First Cause of Action For Breach of Contract</p> <p>13 Because The Center Was Not a Party to The Contract</p>	
<p>14 1. The California Science Center ("Center"),</p> <p>15 also known as the Sixth Agricultural</p> <p>16 Association, was created by the California State</p> <p>17 Legislature pursuant to Food and Agriculture</p> <p>18 Code, Division 3, Part 3.</p> <p>19</p> <p>20 Ono Decl., Ex. 10 [Tateishi Dep. Tr., 15:20-</p> <p>21 23]; (Food & Agr. Code, sections 3801, et seq.)</p>	
<p>22</p> <p>23 2. The Center is a state institution organized</p> <p>24 within the State and Consumer Services</p> <p>25 Agency and is deemed a tax-exempt</p> <p>26 organization as an instrumentality of this state</p> <p>27 in accordance with Section 23706 of the</p> <p>28 Revenue and Taxation Code.</p>	



Evidence: Gotta Have It

Different types of evidence:

Declarations of witnesses

Documents (attach as exhibits to declas)

Statements or documents produced through **discovery**

Admissions in the **pleadings**

Facts that can be **judicially noticed**

How to properly submit evidence is complicated! Take a class or ask for help...



1 DECLARATION OF CYNTHIA PYGIN

2 I, Cynthia Pygin, declare as follows:

3 1. I submit this declaration in support of the California Science Center Foundation (the
4 “Foundation”) and Jeffrey Rudolph’s (as President of the Foundation and in his individual capacity)
5 Motion for Partial Summary Adjudication on the claims asserted by American Freedom Alliance
6 (“AFA”) under the United States Constitution and California Constitution.. I have personal
7 knowledge of the facts set forth herein and if called as a witness, I could and would competently
8 testify hereto.

9 2. I am Chief Financial Officer and Senior Vice President of the California Science
10 Center Foundation (the “Foundation”). I have worked for the Foundation for over 7 years.

11 3. Foundation employees are paid directly by the Foundation for their work on behalf of
12 the Foundation. Individuals who are employed solely by the Foundation do not receive any benefits
13 generally available only to public employees, such as state healthcare or retirement benefits.
14 Foundation employees are not classified as civil servants.

15 4. The Foundation’s Board of Trustees currently consists of 83 members. Nine of those
16 members are also members of the Board of Directors of the California Science Center (the “Science
17 Center”).

18 5. Except for payments received pursuant to contractual relationships between the
19 Foundation and the State Center, the Foundation receives no revenue from the Science Center.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct. This declaration is executed on February 25, 2011 in Los Angeles, California.

22 
23 Cynthia Pygin

24 101025714_1.DOC

Evidence: Sample Declaration

Witnesses generally must have personal knowledge, and the declaration must lay a foundation for the statements made.

Here, the witness states how and why she knows the stated facts.

Standard language (underlined).



Evidence: Documents

Attach as exhibits to declaration of a witness
Declaration must provide foundation and
authenticate the document.

Example:

Foundation: “In June of 2015, Mary and I entered into an agreement for me to purchase 1,000 ‘I Love L.A.’ t-shirts for resale.”

Authentication: “A true and correct copy of that agreement is attached hereto as Exhibit A.”



Evidence: Discovery

Statements and documents obtained through discovery can be very helpful

They must be attached as exhibits to a supporting declaration

Foundation needed is usually minimal, e.g.,
“The document attached as Exhibit B is a true and correct copy of defendant’s response to my Special Interrogatories of February 1, 2016, which I received by mail on February 20, 2016.”



Opposing MSJ/MSA

Opposition papers must be filed 14 days before hearing.

They must be served by a method “reasonably calculated to ensure delivery to the other party on the next business day” after the papers are filed, as required by CCP § 1005(c).



Opposing MSJ/MSA

Opposition papers must include:

1. Memorandum of points & authorities
2. The completed Separate Statement of Material Facts
3. Evidence (almost always)



Opposing MSJ/MSA

Opposition must show a “triable issue of material fact.”

For plaintiff: present admissible evidence of each element of each cause of action, and to defeat any defense.

For defendant: show at least one element of plaintiff’s claim cannot be satisfied, or undisputed evidence establishes a defense.



Opposing MSJ/MSA

Burden is much lower for non-moving party

- Court cannot weigh evidence (so any admissible evidence can defeat motion)
- Evidence is seen in light most favorable to non-moving party.

TIP: remind judge of these standards with citations to law in P's & A's



Opposing MSJ/MSA Separate Statement

Opposing party completes second column by adding:

1. Objections to evidence
2. Admission that fact is undisputed or explanation of how it is disputed
3. Reference to evidence that shows dispute

See example in handout. Many more available at reference desk.



Opposing MSJ/MSA Separate Statement

Opposing party may also provide new facts to show a triable issue exists.

1. Must be supported by admissible evidence
2. Can be disputed or undisputed



Opposing MSJ/MSA

Opposing party can seek **continuance** upon:

- good faith showing
- supported by sworn declaration that
- more time is needed to obtain evidence necessary to oppose

CCP § 437c(h)

Must be by separate noticed motion or ex parte application



Moving Party's Reply

Moving party then gets to file a reply:

- File & serve at least 5 days before hearing
- Respond to arguments made in opposition
- Rare: present supplementary evidence
 - evidence that responds to opposing party's evidence
 - No new evidence to support motion that you forgot to include!

Question: Why rare?



Hearing on the Motion

Each side can make oral argument or ask questions about the motion

Judge may set a time limit

Many judges prohibit repeating what is in the papers

TIP: If opposing, say you want to respond to the reply.



Proposed Order

Moving party generally files proposed order with reply papers (not with moving papers because need to address opposition evidence)

Order must specify evidence demonstrating no triable issue exists, explain why opp fails to raise a triable issue, and rule on objections.



Proposed Order

If no prehearing proposed order submitted:

1. Court may direct who will prepare; or
2. Prevailing party must prepare and serve the order within 5 days after court's ruling

Opposing party has 5 days to object to form of the proposed order



Library Resources: You Need Them!

Civil lawsuits are complicated. Even the most experienced litigation attorneys refer to practice guides and other secondary sources frequently.

These are essential tools when handling a lawsuit – and there is nothing comparable available for free online!



Library Resources: You Need Them!

- Rutter Group California Practice Guide: *Civil Procedure Before Trial* – v. 3, ch. 10 (also see **Forms** volume) (also on Westlaw)
- Bender Practice Guide: *California Pretrial Civil Procedure* – v. 3, ch. 38 (also on Lexis)
- CEB: *California Summary Judgment* (two volumes) (also on CEBOnlaw)
- Consult one of our reference librarians for additional resources



Questions?

