



## Federal *Pro Se* Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

### ▣ How to File a Motion for Summary Judgment ▣

#### What is a Motion for Summary Judgment?

A Motion for Summary Judgment can be filed by any party in a lawsuit (defendant or plaintiff) who wants the Court to enter a final judgment on all or some of the parties' claims or defenses before trial. The Motion for Summary Judgment is governed by Federal Rule of Civil Procedure 56.

The party who files the Motion for Summary Judgment is called the "**moving party**" and can file the Motion if he or she believes that there is **no genuine dispute as to any material fact** and that he or she **is entitled to judgment as a matter of law** with respect to some or all of the parties' claims or defenses.

If the Court grants the Motion for Summary Judgment, the moving party will obtain a final judgment on all or some of the parties' claims or defenses. If the Court denies the Motion for Summary Judgment, the case will proceed to trial, unless the parties agree to settle the case. Therefore, when the Court denies a Motion for Summary Judgment, the judge is not saying the moving party has lost on the claims or defenses raised in the Motion. Rather, the judge is saying that a trial is necessary to determine the outcome of those claims and defenses.

#### Glossary:

##### What is a "material fact"?

A "material fact" is a fact that is important to or will likely prove any of the claims or defenses in your case. For example, the following are material facts in a personal injury case where an element of the plaintiff's claim is negligence:

- Defendant was driving 100 miles per hour before his car collided with plaintiff's car.
- Defendant ran a red light seconds before his car collided with plaintiff's car.

#### Summary Judgment is complicated!

Read Federal Rule of Civil Procedure 56 and Local Rule 56 of the Central District of California thoroughly before drafting your Motion for Summary Judgment. Consider consulting the law library for authoritative books on Motions for Summary Judgment. In addition, read your judge's "standing order" for any additional requirements for the Motion for Summary Judgment.

## **When Can You File a Motion for Summary Judgment?**

The Motion for Summary Judgment may be filed after the defendant has filed a response to the complaint (such as an answer or a motion to dismiss), but no later than 30 days after the close of discovery. You will find the deadline for the close of discovery by looking at the Court’s “scheduling order” in your case. The judge may also set a specific deadline in the scheduling order for filing a Motion for Summary Judgment. (The judge may call the Motion for Summary Judgment a “dispositive motion” in your scheduling order.)

Consider filing your Motion after the completion of discovery because most Motions for Summary Judgment rely heavily on the evidence and facts obtained through discovery. In addition, the Court may deny your Motion or give your opponent more time to file an Opposition to the Motion if he or she files a declaration or affidavit telling the Court he or she needs more discovery to oppose the Motion. See Federal Rule of Civil Procedure 56(d) for more information.

## **What Must the Motion for Summary Judgment Include?**

To file a Motion for Summary Judgment, you will need to prepare the following documents:

- 1) Notice of Motion for Summary Judgment and Motion for Summary Judgment
- 2) Memorandum of Points and Authorities in Support of Motion for Summary Judgment
- 3) Declaration in Support of Motion for Summary Judgment
- 4) Statement of Uncontroverted Facts and Conclusions of Law
- 5) Proposed Judgment
- 6) Proof of Service by Mail

## **Description of Each Document**

### **1) Notice of Motion for Summary Judgment and Motion for Summary Judgment**

A Notice of Motion for Summary Judgment and Motion for Summary Judgment provides written notice to the Court that you are filing the Motion. The Notice of Motion for Summary Judgment must be filed no later than **31 days before the hearing date set for the Motion**. (See page 6 of this guide for more information about how to schedule a hearing date.)

#### **Opposition Deadline**

The non-moving party may file an Opposition to the Motion for Summary Judgment no later than **21 days before the hearing date set for the Motion**. See Public Counsel’s “How to Oppose a Motion for Summary Judgment” packet for more information.

#### **Reply Deadline**

If the non-moving party files an Opposition to the Motion for Summary Judgment, the moving party may file a Reply to the Opposition. The deadline to file a Reply is no later than **14 days before the hearing date set for the Motion**. A Reply should directly

respond to the arguments made in the Opposition. Some judges impose page limits on Replies so read any orders issued by your judge carefully.

## **2) Memorandum of Points and Authorities in Support of Motion for Summary Judgment**

The Memorandum of Points and Authorities includes any legal authorities and arguments that support your Motion. An effective Memorandum contains a strong legal argument, with references to the facts as well as to legal authorities such as case opinions and statutes. When supporting your argument with facts, make sure every fact you rely upon is supported by admissible evidence. It is not enough to repeat your opinion that a fact is true or to point to arguments you have stated in documents you previously filed. You should attach all of your supporting evidence as exhibits to the Declaration(s) filed in support of your Motion.

The Memorandum of Points and Authorities must not exceed **25 pages** in length. If the Memorandum is more than 10 pages in length, it must also contain a table of contents and a table of authorities (i.e. a list of the cases and statutes you use to support the memorandum and the pages where you cite them).

## **3) Declaration in Support of Motion for Summary Judgment**

The Declaration is a sworn statement to the Court stating all of the declarant's facts supporting your Motion. These facts must come from the declarant's own personal knowledge of the events. The declarant should also explain how he or she obtained knowledge of the facts included in the Declaration. Therefore, a Declaration is like a written version of what the declarant would testify if he or she were on the witness stand.

You may submit your own Declaration, swearing to the facts you know that support your case. You may also submit Declarations from other people if they swear to the facts stated in the Declaration. Any Declaration must be signed by the declarant.

Attach, as exhibits to the Declaration, any documents discussed in the Declaration. You must do this because the Declaration will verify the truth or authenticity of the document you attach as an exhibit. The Declaration should state whether each exhibit is a true and correct copy of the original document and explain what the document is. It is helpful to designate each exhibit with a number or a letter, for example, Exhibit A, Exhibit B, etc.

## **4) Statement of Uncontroverted Facts and Conclusions of Law**

This document has two parts:

- a. The **Statement of Uncontroverted Facts** lists the material facts you argue are undisputed as well as the sources of these facts. This list essentially summarizes all the evidence you believe proves you are entitled to judgment on some or all of the parties' claims or defenses.

- In preparing your Statement of Uncontroverted Facts, create two columns. The left hand column should state the **undisputed facts** in your case. The right hand column should state the **source** that supports this undisputed fact. The chart below illustrates what these two columns look like.
- Place each fact in a separate box and number each box sequentially.

Undisputed Fact	Source
1. Defendant’s car did not collide with the plaintiff’s vehicle.	Declaration of Jane Doe, Exhibit B (Deposition of Bob Jones on Jan 1, 2011, Page 2: Lines 4-6).
2. Defendant did not run a red light.	Declaration of Bob Jones, Exhibit C, ¶ 5.
3. Defendant filed a police report on April 1, 2011.	Declaration of Bob Jones, Exhibit D (Deposition of James Smith), ¶ 24.

- The facts must be *evidentiary* facts, not mere conclusions. This means your facts must be supported by citations to specific parts of the record, such as depositions, affidavits, declarations, admissions, stipulations, interrogatory answers, and any other evidence. Citations to the record must be *precise*. Therefore, cite to specific pages and paragraphs of the declarations and exhibits filed in support of your Motion. Remember, if you cite to a document, you must attach it as an exhibit to a Declaration filed in support of your Motion.

- b. The **Conclusions of Law** lists the conclusions of law you make in the memorandum and the statutes or cases you use to support those conclusions of law. Think of this document as a summary of your legal arguments.

**5) Proposed Judgment**

The Proposed Judgment is a document for the judge to sign if he or she wants to grant your Motion for Summary Judgment. Do not sign the Proposed Judgment. Instead, leave a space for the judge’s signature.

**6) Proof of Service by Mail**

In the Proof of Service, you or someone else will swear to the Court that you have mailed a copy of the documents above to the opposing counsel or to the unrepresented opposing party.

## Formatting Your Motion

By following the instructions below, you will comply with the format requirements of the Local Rules for the Central District of California:

- 1) **Pleading Paper**: Motions must be written on pleading paper. “Pleading paper” is letter-sized (8.5” x 11”) paper that has the numbers 1-28 typed down the left-hand side. You can download a template for pleading paper in MS-Word format on Public Counsel’s Website:
  - <http://www.publiccounsel.org/featured?id=0003>
  - click the link that says “Pleading Paper” in the list of forms.

- 2) **Font, Margins, and Spacing**: 14 pt size font (suggested fonts: Times New Roman or Arial); 1-inch margins; double-spaced.

- 3) **Name and Contact Information**: Starting on Line 1, write your name, address, and phone number. Write “Plaintiff in Pro Per” or “Defendant in Pro Per” underneath your personal information.

- 4) **Line 8 or below**: Type the name of the Court (UNITED STATES DISTRICT COURT). On the next line, write the district name (CENTRAL DISTRICT OF CALIFORNIA).

- 5) **Party Names**: Below the name of the Court and district, write the names of the plaintiff and the defendant(s).

- 6) **Case Number**: Your case number should be identified to the right of the party names. Be sure to include all of the letters that make up the judges’ initials.

- 7) **Title of Document**: Under the Case Number, write the title of your document. For example, “Notice of Motion and Motion for Summary Judgment.”

- 8) **Hearing Information**: Include the Motion hearing date, time, judge, and courtroom below the title of each document. (Note, however, that judges will often move a scheduled hearing date or cancel the hearing altogether and decide the Motion based only on the written documents the parties have submitted.)

- 9) **Date and Signature**: When you have finished writing your Motion documents, write the date, your signature and your name.

- 10) **Footer and Page Numbers**: Type the title of your document in the footer. Number every page.

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10	Plaintiff's Name,	)	Case No.: CV10-000 PA (SSWx)
11	Plaintiff,	)	
12	vs.	)	<b>DEFENDANT'S NOTICE OF</b>
13	Defendant's Name,	)	<b>MOTION AND MOTION</b>
14	Defendant.	)	<b>FOR SUMMARY</b>
15		)	<b>JUDGMENT (F.R.C.P. 56)</b>
16		)	<b>Hearing Date: Dec. 21, 2012</b>
17		)	<b>Time: 1:30 pm</b>
18		)	<b>Judge: Percy Anderson</b>
19		)	<b>Courtroom: 15</b>
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21			<b>TO THE HONORABLE COURT AND TO ALL PARTIES:</b>
22			PLEASE TAKE NOTICE that on December 21, 2012
23			at 1:30 p.m., or as soon thereafter as this matter may be heard
24			in the above-entitled Court for hearing the Motion for
25			Summary Judgment, pursuant to Federal Rule of Civil
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Notice of Motion for Summary Judgment 1

## **Meet and Confer Requirement**

Before filing a Motion for Summary Judgment, the moving party must call the opposing party (or, if the party is represented by a lawyer, the opposing party's lawyer) to discuss and try to resolve the issue that caused the moving party to consider filing the Motion. The moving party must meet and confer with the opposing party at least **7 days** before filing the Motion. The purpose of this rule is to encourage parties to resolve problems without having to resort to a formal motion with the Court.

## **Scheduling a Hearing Date**

When you file a Motion for Summary Judgment, you must propose a hearing date—a date on which you and the other party or the party's lawyer must appear before the judge assigned to your case to orally argue about the Motion. In the Central District of California, the date must be at least **31 days** after the date you file the Motion for Summary Judgment and serve a copy by mail. You will write this date under the title of your Motion.

To schedule a date for the Motion, look at your judge's schedule and find out when the judge hears civil motions. To find this information online, do the following:

- 1) Go to the Central District's website, at <http://www.cacd.uscourts.gov>.
- 2) On the central navigation bar of the website, click on the link, "Judge's Requirements" and then, "Judges Procedures and Schedules."
- 3) Click on your judge's name.
- 4) Read your judge's procedures and look for the day that he or she hears civil motions. For example, your judge may hear civil motions every Monday at 1:30 p.m. If that is the case, you must propose a hearing date on a Monday, 31 days or more after the day you file your Motion.
- 5) Towards the beginning of each judge's page, there is a link that says, "Click here to view Closed Motion Dates." That page lists the dates on which each judge will **not** be hearing motions. Click that link to make sure that you are not scheduling a hearing on a closed motion date.

If you do not have internet access, you should call the court room deputy (CRD) for the judge assigned to your case.

## **Filing Your Motion**

When you have completed your Motion for Summary Judgment, you must file it with the Civil Intake Division of the courthouse in which the judge who is hearing the Motion is located. File **1 original** and **2 copies** of each document you wish to file with the Civil Intake Division.

You may file your Motion for Summary Judgment with the Court in person or by mail. Keep in mind that mailing your Motion to the Court may delay the official date on which it is filed. The addresses for the Civil Intake Division for the Central District of California courthouses are as follows:

**LOS ANGELES**

United States Courthouse  
Central District of California  
255 East Temple St., Ste TS-134  
Los Angeles, CA 90012

**SANTA ANA**

United States Courthouse  
Central District of California  
Southern Division  
411 West Fourth St., Ste 1053  
Santa Ana, CA 92701-4516

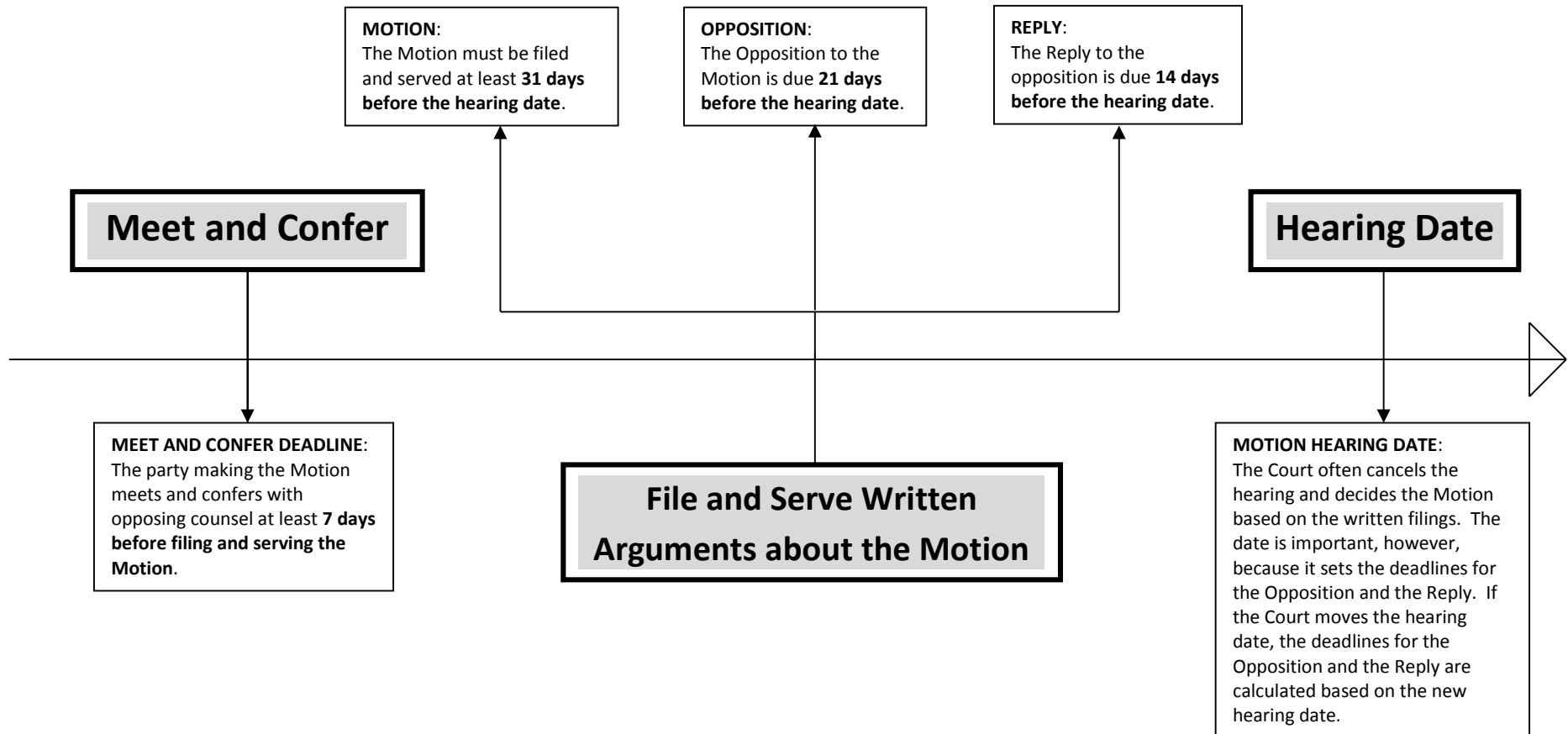
**RIVERSIDE**

United States Courthouse  
Central District of California  
Eastern Division  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

**Serving Your Motion**

In addition to filing your Motion for Summary Judgment with the Court's Civil Intake Division, send 1 copy of each document you have filed to the opposing party, or if the party has an attorney, to the opposing party's attorney by mail on the same day you file. For service by personal service, the Notice of Motion must be served no later than 28 days before the Motion's hearing date. For service by mail, the Motion must be served no later than 31 days before the Motion's hearing date.

## Motion for Summary Judgment Timeline in the Central District of California





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\_\_\_\_\_ in Pro Per  
(indicate Plaintiff or Defendant)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s).

Case No.: \_\_\_\_\_  
\_\_\_\_\_'s  
(indicate Plaintiff or Defendant)

**NOTICE OF MOTION AND  
MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO  
FED. R. CIV. P. 56**

**Hearing Date:** \_\_\_\_\_  
**Hearing Time:** \_\_\_\_\_  
**Judge:** \_\_\_\_\_  
(Judge's name)  
**Place:** \_\_\_\_\_  
(courtroom number)

**TO THE HONORABLE COURT AND TO ALL PARTIES:**

PLEASE TAKE NOTICE that on \_\_\_\_\_ at \_\_\_\_\_,  
(date) (time)  
or as soon thereafter as this matter may be heard in the above-entitled Court  
located at \_\_\_\_\_,  
(address of the Court in which the motion is being made)  
\_\_\_\_\_, the \_\_\_\_\_  
(your name) (indicate Plaintiff or Defendant)

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in this case will move this Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56. This motion is based on this notice, the memorandum of points and authorities filed herein, the declaration(s) filed by \_\_\_\_\_, (indicate Plaintiff or Defendant), the exhibits filed herein, the statement of uncontroverted facts and conclusions of law, the pleadings previously filed in this action, and any oral argument permitted at the hearing on this motion.

This motion is made following the conference of counsel pursuant to Local Rule 7-3 which took place on \_\_\_\_\_ (date).

DATED: \_\_\_\_\_

By: \_\_\_\_\_ (sign)  
\_\_\_\_\_  
(print name)  
\_\_\_\_\_ in Pro Per  
(indicate Plaintiff or Defendant)

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(indicate Plaintiff or Defendant)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant(s).

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO  
FED. R. CIV. P. 56**

**Hearing Date:** \_\_\_\_\_

**Hearing Time:** \_\_\_\_\_

**Judge:** \_\_\_\_\_  
(Judge's name)

**Place:** \_\_\_\_\_  
(courtroom number)

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**I. INTRODUCTION**

*(Include a brief statement of the facts and the procedure in the case that are relevant to this motion.)*

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## II. STANDARD OF REVIEW

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing there is no genuine issue of material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). To defeat the motion for summary judgment, the responding party must present admissible evidence sufficient to establish any of the elements that are essential to the moving party's case and for which that party will bear the burden of proof at trial. *See id.*; *Taylor v. List*, 880 F. 2d 1040, 1045 (9th Cir. 1989). The Court may grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to summary judgment and if the responding party fails to properly address the moving party's assertion of fact as required by Rule 56(c). *See* Fed. R. Civ. P. 56(e).

The responding party cannot point to mere allegations or denials contained in the pleadings. It is not enough for the non-moving party to produce a mere "scintilla" of evidence. *Celotex Corp.*, at 252. Instead, the responding party must set forth, by affidavit or other admissible evidence, specific facts demonstrating the existence of an actual issue for trial. *See KRL v. Moore*, 384 F. 3d 1105, 1110 (9th Cir. 2004).

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**III. ARGUMENT**

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**IV. CONCLUSION**

For the reasons stated above, \_\_\_\_\_ is entitled to judgment.  
(indicate Plaintiff or Defendant)

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(sign)

\_\_\_\_\_  
(print name)

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(indicate Plaintiff or Defendant)



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(indicate Plaintiff or Defendant)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s).

**DECLARATION IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO  
FED. R. CIV. P. 56**

**Hearing Date:** \_\_\_\_\_

**Hearing Time:** \_\_\_\_\_

**Judge:** \_\_\_\_\_  
(Judge's name)

**Place:** \_\_\_\_\_  
(courtroom number)

I, \_\_\_\_\_, declare as follows:  
(print name)

1. I am the \_\_\_\_\_ in the above-entitled case.  
(indicate Plaintiff or Defendant)
2. I have personal knowledge of the following facts, and, if called as a witness, I could and would competently testify thereto.
3. I discussed and attempted to resolve the issues raised in this motion with the opposing counsel in this case on (*date*): \_\_\_\_\_.

*Revised: March 2019  
Form Prepared by Public Counsel.  
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All rights reserved.*

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I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, in \_\_\_\_\_.  
(date of signing) (city, state of signing)

\_\_\_\_\_  
(signature)

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(indicate Plaintiff or Defendant)

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(indicate Plaintiff or Defendant)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s).

**STATEMENT OF  
UNCONTROVERTED FACTS  
AND CONCLUSIONS OF LAW IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT  
PURSUANT TO LOCAL RULE  
56-1**

**Hearing Date:** \_\_\_\_\_

**Hearing Time:** \_\_\_\_\_

**Judge:** \_\_\_\_\_  
(Judge's name)

**Place:** \_\_\_\_\_  
(courtroom number)

Pursuant to Local Rule 56-1, \_\_\_\_\_  
(indicate Plaintiff or Defendant) (your name)

files the following Statement of Uncontroverted Facts and Conclusions of Law in support of its Motion for Summary Judgment.

**Statement of Uncontroverted Facts**

<b>Undisputed Material Fact</b>	<b>Source</b>
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**Proposed Conclusions of Law**

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Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(sign)

\_\_\_\_\_  
(print name)

\_\_\_\_\_ in Pro Per  
(indicate Plaintiff or Defendant)



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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s).

**(PROPOSED) JUDGMENT  
GRANTING MOTION FOR  
SUMMARY JUDGMENT  
PURSUANT TO  
FED. R. CIV. P. 56**

Having considered \_\_\_\_\_'s Motion for Summary Judgment and  
(indicate Plaintiff or Defendant)  
finding good cause therefore,

IT IS HEREBY ADJUDGED that \_\_\_\_\_'s Motion for  
(indicate Plaintiff or Defendant)  
Summary Judgment is GRANTED.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Hon. \_\_\_\_\_  
(Judge's name)

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\_\_\_\_\_  
(Full Name)  
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(Email)  
\_\_\_\_\_  
(Address Line 1)  
\_\_\_\_\_  
(Address Line 2)  
\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_ in Pro Per  
(indicate Plaintiff or Defendant)

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: \_\_\_\_\_

\_\_\_\_\_,  
Plaintiff,  
vs.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_,  
Defendant(s).

**PROOF OF SERVICE BY MAIL**

I, \_\_\_\_\_, declare as follows:  
(name of person serving documents)

My address is \_\_\_\_\_

\_\_\_\_\_, which is located in the  
county where the mailing described below took place.

On \_\_\_\_\_, I served the document(s) described as:  
(date of mailing)

- 1 • Notice of Motion and Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56
- 2
- 3 • Memorandum of Points and Authorities in Support of Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56
- 4
- 5 • Declaration in Support of Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56
- 6
- 7 • Statement of Uncontroverted Facts and Conclusions of Law Pursuant to Local Rule 56-1
- 8
- 9 • Proposed Judgment Granting Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56
- 10

11 on all interested parties in this action by placing a true and correct copy thereof in  
 12 a sealed envelope, with first-class postage prepaid thereon, and deposited said  
 13 envelope in the United States mail at or in \_\_\_\_\_,  
 14 (city and state of mailing)  
 15 addressed to:

_____ (name)	_____ (name)
_____ (address)	_____ (address)
_____ (address)	_____ (address)
_____ (address)	_____ (address)

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on \_\_\_\_\_ at \_\_\_\_\_.  
 23 (date) (city and state of signing)

24 \_\_\_\_\_  
 25 (sign)  
 26 \_\_\_\_\_  
 27 (print name)