



Federal *Pro Se* Clinic

CENTRAL DISTRICT OF CALIFORNIA: WESTERN DIVISION

Guide to Discovery:

■ Motion to Compel ■

A. What is a Motion to Compel?

A Motion to Compel is a formal request to the Court to require a party or a non-party in a lawsuit to comply with a discovery request such as a request for production, request for admission, interrogatory, or subpoena. A Motion to Compel is governed by Federal Rule of Civil Procedure 37 and Central District of California Local Rule 37.

The party who files a Motion to Compel is called the “**moving party**” and he or she may file a Motion to Compel when another party or non-party has provided an inadequate response to a discovery request pursuant to the Federal Rules of Civil Procedure.

Make sure you have a legal basis for filing a Motion to Compel. You cannot file a Motion to Compel simply because the other party refuses to respond to any of your informal requests for information.

Consider Filing a Motion to Compel if:

- A party fails to answer an interrogatory.
- A party’s response to a discovery request is incomplete or evasive.
- A person fails to answer a question during a deposition.
- A non-party objects to a request for documents under a subpoena.

Do Not File a Motion to Compel if:

- You are trying to obtain discovery that is not relevant to your claims or defenses and is not proportional to the needs of your case.
- The discovery you are seeking would impose an undue burden on the responding party.
- You have not made a formal discovery request under the Federal Rules of Civil Procedure.

B. When Can You File a Motion to Compel Discovery?

A Motion to Compel can be filed only after you have made a formal discovery request under Federal Rules of Civil Procedure 33, 34, 36, or 45 and you have met and conferred with your opponent (see section C below.)

If you believe that you have a legal basis for filing a Motion to Compel, file it within a reasonable time after you receive the improper discovery response. The Court may reject your Motion to Compel as untimely if you file it after your discovery deadline or long after you became aware of the insufficient response to your discovery request. Therefore, make sure to consult the “scheduling order” in your case or your judge’s “standing order” to identify your exact discovery deadline. In fact, some judges explicitly state in the scheduling order when a Motion to Compel must be filed with the Court. As you will read below, there are several, often time-consuming steps you must take before you can file a Motion to Compel. Give yourself enough time to complete these steps by propounding discovery many months before your discovery deadline.

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c. **Before You Can File a Motion to Compel: The “Meet and Confer” and “Joint Stipulation”**

Before you can file a Motion to Compel, you must participate in a “Meet and Confer” process and draft a “Joint Stipulation” with the opposing counsel or your unrepresented opponent (hereinafter “your opponent”). This process is time-consuming and must be followed closely. Make sure to complete the Meet and Confer and Joint Stipulation process well before your discovery deadline so that you will have enough time to file the Motion to Compel.

a. **Meet and Confer Requirement**

Within a reasonable time after receiving an improper discovery response, arrange to “Meet and Confer” in good faith and **in person** with your opponent in an effort to eliminate the need for a Motion to Compel and resolve as many discovery disputes as possible. If you and your opponent are located in different counties, the Meet and Confer may take place telephonically. Make this arrangement in writing by sending a Meet and Confer letter to your opponent. Keep a copy of this letter for yourself.

1. **Content of Meet and Confer Letter:**

- a) Arrange a date and time for the meeting. Suggest several dates and times that will suit your schedule and ask your opponent to agree to them.
- b) If you and your opponent are located in the same county, the Meet and Confer will take place in person at your location, unless you both agree to meet at a different location.
- c) Address the discovery issues you want to raise with the Court. Identify each interrogatory, request for production, request for admission, or subpoenaed request you want the Court to consider.
- d) Briefly state your position on the discovery request. Explain why you believe the response was deficient. Include any legal authority (such as rules, statutes, or case law) that supports your position. In addition, you must “specify the terms of the discovery to be sought.” This means that you must explain what relief you will seek through a Motion to Compel.
- e) Within ten days of the opponent’s receipt of your letter, you and your opponent must meet at your agreed upon location. At this meeting, you should attempt to resolve your discovery dispute(s).

May 15, 2015

James Morgan
Morgan & Morgan, LLC
1500 South Main Street
Los Angeles, CA 90048

Re: *Doe vs. Smith*, CV 15-990 MTM (DA),
Rule 37 Demand for Meet and Confer

Dear Mr. Morgan:

I write to follow up with you regarding a discovery issue resulting from my First Request for Production of Documents. I intend to file a motion to compel Defendant to respond to my discovery request. Local Rule 37 requires that the parties confer in person (or by telephone if in separate counties) regarding all discovery issues prior to filing a motion to compel. Local Rule 37 gives you ten days to meet with me. I am available anytime between 10 a.m. and 7 p.m. on the following days: June 2 through June 16, or June 19. Please immediately inform me, in writing, of which day and time you wish to meet so that I can make myself available. The following is the discovery issue we need to resolve:

With respect to Request for Production No. 1, wherein I requested “Plaintiff’s personnel file,” you stated in your response that “defendant objects on the grounds that this request is overbroad, ambiguous, and not reasonably calculated to lead to discoverable information.” These objections are frivolous. First, the request is clear. It asks for my personnel file. It is not overbroad. It is my file and it is not protected by any privilege. This case is about my employment and my termination; thus, this request is relevant and proportional to the needs of this case. Please immediately produce my personnel file.

Please send me a written letter to indicate on which dates and times you are willing to meet with me to discuss this issue. Although Local Rule 37-1 requires that this meeting take place at the moving party’s offices, I am willing to waive this right and meet at your offices on any of the days and times I have indicated above.

Sincerely,

John Doe
Plaintiff in Pro Per
1234 Overland Street
Los Angeles, CA 90001
213-000-0000

b. Joint Stipulation Requirement

If the Meet and Confer fails to resolve your discovery dispute(s), you may begin the process of preparing a Joint Stipulation that you will file along with your Motion to Compel. The Joint Stipulation is prepared together with your opponent and describes each side's position regarding the disputed discovery. You should begin this process as quickly as possible after the Meet and Confer.

1. Content of the Joint Stipulation:

- a) The title page of the Joint Stipulation will be the customary caption page used in all court filings, but it must also list the discovery cut-off date, the pretrial conference date, and the trial date in your case.
- b) Each party may also include an optional introductory statement, no more than three pages in length. When you draft your introductory statement, leave room for your opponent to draft his or her own introductory statement.
- c) Next, list each disputed discovery request, exactly as you originally wrote it. Underneath the original discovery request, list the opponent's original response, exactly as originally written.
- d) Describe how you attempted in good faith to resolve the disputed discovery item.
- e) List your argument related to each disputed item. Include any legal authority (such as rules, statutes, or case law) that will help the judge decide the issue.
- f) Leave a space for your opponent to fill in his or her argument.
- g) At the end of the Joint Stipulation, include signature blocks for both yourself and your opponent.
- h) Include a table of contents if the Joint Stipulation is longer than ten pages.
- i) Attach a copy of the scheduling order (and any amendments) to the Joint Stipulation.

1	John Doe	
2	jdoe@internet.com	
3	6453 X Street	
4	Los Angeles, CA 90048	
5	(213) 000-0000	
6	Plaintiff in Pro Per	
7		
8	United States District Court	
9	Central District of California	
10		
11	John Doe,	Case No: CV15-990-MTM (DA)
12	Plaintiff,	JOINT STIPULATION RE:
13	vs.	PLAINTIFF'S MOTION
14	Jane Smith,	TO COMPEL
15	Defendant.	[Fed. R. Civ. P. 37; L.R 37-2]
16		Hearing Date: 7/15/15
17		Time: 10:30 a.m.
18		Judge Andrews
19		Discovery Cutoff Date: 1/5/16
20		Pretrial Conference Date: 4/2/16
21		Trial Date: 5/3/16
22		
23	<u>INTRODUCTION</u>	
24	Pursuant to Fed. R. Civ. P. 37 and Local Rule 37-2,	
25	Plaintiff John Doe and Defendant Jane Smith submit	
26	the following Joint Stipulation regarding Plaintiff's	
27	Motion to Compel responses to Plaintiff's Requests	
28	for Production Nos. 4 and 11. Pursuant to Local Rule	
	1	JOINT STIPULATION

1	37-1, the parties met and conferred in good faith on	
2	June 2, 2015, but were unable to resolve the dispute.	
3		
4	<u>PLAINTIFF'S INTRODUCTORY STATEMENT</u>	
5		
6	On March 2, 2015, Plaintiff served his first set of	
7	requests for production of documents. The requests	
8	sought evidence to support Plaintiff's argument that he	
9	is entitled to equitable tolling, namely, that he was	
10	unable to timely file this action because he suffered a	
11	nervous breakdown. On April 20, 2015, Defendant	
12	served her responses. Defendant's responses contained	
13	only objections. Defendant did not produce any	
14	documents. Plaintiff's discovery requests are	
15	necessary to establish that the Plaintiff is entitled to	
16	equitable tolling. As a result, Plaintiff requests	
17	that the Court compel Defendant to respond to	
18	Plaintiff's discovery requests and to review and produce	
19	all discoverable documents.	
20		
21	<u>DEFENDANT'S INTRODUCTORY STATEMENT</u>	
22		
23	The instant action concerns Plaintiff John Doe,	
24	who alleges that his civil rights were violated in 2013	
25	while he was incarcerated at the California State Prison	
26	when a corrections officer attacked Plaintiff during a	
27	verbal altercation with another inmate.	
28		
	2	JOINT STIPULATION

2. How to Prepare the Joint Stipulation:

- a) Email, fax, or personally deliver your portion of the Joint Stipulation to your opponent as soon as possible after the Meet and Confer. If you intend to submit a Declaration in support of the Motion to Compel, send the Declaration along with any supporting exhibits you would like to attach to the Declaration to your opponent at this time.
- b) Your opponent must respond with his or her arguments and supporting documents within **seven days** after receiving your portion of the Joint Stipulation.
- c) You must add your opponent's arguments and documents to the Joint Stipulation and return it to your opponent for his or her signature. Your opponent must sign and return the Joint Stipulation **before the end of the next business day**.

Q. What if your opponent refuses to participate in the joint stipulation process?

A. If your opponent refuses to participate in the joint stipulation process after you have made a good faith attempt to secure their cooperation, draft the stipulation on your own and file your Motion to Compel. In your supporting declaration, include a description of your opponent's refusal to cooperate in the joint stipulation process.

D. What Should the Motion to Compel Discovery Include?

You may file the Motion to Compel once the Joint Stipulation is complete. The Motion to Compel will include the following documents:

- **Notice of Motion and Motion to Compel**
For basic information about drafting a Notice of Motion and Motion, see Public Counsel's guide "How to Submit a Motion." Make sure that you schedule the Motion to Compel before the proper judge. In some cases, a magistrate judge will be assigned to all discovery matters in your case. If so, set the hearing before the magistrate judge instead of the district judge assigned to your case.

In addition, include the discovery cut-off date, the pre-trial conference date, and the trial date scheduled in your case in the caption of every document filed with the Motion to Compel.

You must also include a **Certification** in your Notice of Motion and Motion document that informs the Court that you, as the moving party, in good faith, conferred or attempted to confer with the other party to obtain the discovery without the Court's intervention. The following is sample wording for this Certification:

"Defendant certifies that prior to filing this motion he conferred in good faith with counsel for the plaintiff in order to resolve this matter by agreement, but the parties have been unable to do so. Specifically, counsel for the defendant _____

_____.

[specify the actions you have taken to resolve the dispute]

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- **Joint Stipulation**

The Joint Stipulation will serve as your written argument in support of the Motion to Compel.

- **Declarations with accompanying evidence (Optional)**

The Declaration is a sworn statement to the Court stating all of the facts supporting the Motion to Compel. These facts must come from your own personal knowledge of the events. You should also explain how you obtained knowledge of the facts included in the Declaration. Therefore, a Declaration is like a written version of what you would say if you were on the witness stand. You may also submit declarations from other people who have personal knowledge of facts supporting the Motion to Compel.

The Declaration should include as exhibits the original discovery requests or deposition questions and any responses to the original discovery requests or deposition questions that are the subject of the Motion to Compel. The Declaration should also include a description of the good faith attempt you made to resolve the discovery dispute(s) identified in the Joint Stipulation.

- **Proposed Order**

The Proposed Order is a document for the judge to sign if he or she wants to grant the Motion to Compel. Do not sign the Proposed Order. Instead, leave a space for the judge's signature.

- **Proof of Service**

In the Proof of Service, you or someone else will swear to the Court that you have mailed a copy of the Motion to Compel (along with any declarations and proposed order) to your opponent.

- **Supplemental Memorandum of Law (Optional)**

After filing the Motion to Compel, either side may submit a Supplemental Memorandum of Law that further supports their position regarding the discovery dispute. The Supplemental Memorandum of law cannot exceed five pages in length and must be filed no later than **fourteen days** before the hearing date scheduled for the Motion to Compel.

E. Are you Compelling Non-Parties?

If you are seeking to compel discovery from a person or entity that is not a party to your lawsuit (i.e., through a subpoena), you must file the Motion to Compel in the district court where the discovery is located or will be taken. In addition, a Motion to Compel involving a non-party must follow all of the procedures required by the Federal Rules of Civil Procedure and the Local Rules of the Central District of California.

Be mindful of Federal Rule of Civil Procedure 45's warning that you should not impose an undue burden on a non-party. Take reasonable steps to ensure that you only ask for information that is specific, relevant, time-limited, and proportional to the needs of your case. At a minimum, make sure that you do not already have what you are requesting from the non-party. If you do not take reasonable steps to avoid imposing an undue burden on the non-party, you risk being sanctioned by the Court.