

APPENDIX A – Code of Civil Procedure section 437c (Summary Judgment/Adjudication)

CCP section 437c: Motions for Summary Judgment (MSJ) and Summary Adjudication (MSA)
(A synopsis of the critical and operative sections and subsections to this presentation)
(Amended 2024, Effective Jan. 1, 2025)

437c(a)(1) May bring the MSJ and/or MSA not prior to 60 days after a general appearance by the party against whom the motion is brought

437c(a)(2) Notice must be given 81 to all parties before the hearing on the motion
Note: Count correctly. If 81st day falls on a weekend/holiday, you must go backwards (adding additional time/days) and forward to the next Monday with could lead to less than 81 days' notice.

Note: Mail adds 5 days (86) total, express/fax/any next day adds 2 days (83)

Note: See most current rules on electronic service

Practice pointer: Get email confirmation that all moving and opposing papers may be served electronically on "x" date/days' notice and attach as Exhibit to your Declaration.

437c(a)(3) MSJ and/or MSA may not be heard later than 30 days before the trial date (unless good cause with a court order)

Note: Per above, count correctly if 30 days falls on a weekend/holiday)

437c(b)(1) The motion "shall" be supported by:

(1) Such items as RFA's, Rogs, Depos, declarations, etc, and

(2) The Separate Statement shall "plainly and concisely" provide all material facts that are undisputed with reference to evidence in support

Note: Failure to comply with (b)(1) is sufficient grounds to deny the motion

437c(b)(2) The Opposition must be filed and served not less than 20 before the hearing date and "where appropriate" shall be supported by such items as RFA's, Rogs, Depos, declarations, etc.

437c(b)(3) The Opposition "shall" include a Separate Statement in response to each material fact contended in the Separate Statement if you agree or disagree as to each such material fact and the Opposition "shall" set forth "plainly and concisely" any other material fact disputed with supporting evidence

Note: Failure comply with (b)(3) is sufficient grounds to grant the motion

437c(b)4 Any Reply documents must be filed and served not less than 11 days prior to the hearing. The Reply shall not include any evidentiary matter or (new/counter) Separate Statement with the Reply not part of the moving or opposing papers.

Query: Does this allow for a moving party to respond to the Additional Material Facts submitted in opposition?

437c(b)(5) Any evidentiary objection not made is waived

Note: See CRC, Rules 3.1352 and 3.1354 below (timely make your objections with your Opposition or Reply papers)

437c(c) The court shall grant the motion based on the evidence, except judgment shall not be granted based on evidentiary inferences if contradicted by other inferences to triable issues of material fact

437c(d) Any Supporting and/or Opposing affidavits, declarations, documents etc must have proper foundations and the witness must be competent to so testify

437c(f)(1) A MSA may move on one cause of action or one affirmative defense, and shall be granted if the motion completely disposes of (1) the cause of action, (2) the subject affirmative defense, (3) a claim for damages, or (4) an issue of duty

437c(f)(2) A Party may join a MSJ and a MSA. However, no MSJ may be brought after the issue was denied on an MSA unless the party can show newly discovered facts or law

437c(o) A cause of action has no merit if:

(1) One or more elements cannot be established, or

(2) An affirmative defense is established to that cause of action

437c(p) Burdens of Proof:

437c(p)(1) A plaintiff or cross-complainant has met his/her burden by showing that there is no defense to the cause of action and each element to the cause of action has been proven. If this burden is met, the defendant or cross-defendant then has the burden to prove that there is a triable issue of fact as to the subject cause of action

437c(p)(2) A defendant or cross-defendant has met his/her burden by showing that one or more elements of the subject cause of action has no merit. If this burden is met, the plaintiff or cross-complainant then has the burden to prove that a material fact as the subject cause of action exists

APPENDIX B – California Rules of Court, Article 5 – MSJ's/MSA's 3.1350 – 3.1354

3.1350(a)(2) Defines Material Facts:

Facts that could make a difference in the disposition of the motion

3.1350(b) Summary Adjudication of Issues:

If you bring a MSA with a MSJ, you “must” specifically state in the notice and repeat in the Separate Statement each cause of action or affirmative defense that is being moved upon

Note: This means that you must state in the Notice each Cause of Action, Affirmative Defense, that is the subject of your MSA, and in the Separate Statement you must also “verbatim” state each cause of action or affirmative defense that is being moved upon

Note: This means that you must restate each Material Fact sequentially for each separate cause of action on the MSA in addition to having stated each/all of them on the MSJ

Note: This may lead to a very long Separate Statement. Be careful, concise and thoughtful: not every material fact may be the same for each cause of action, only include each material fact per cause of action or affirmative defense necessary to establish the motion or opposition

3.1350(c) Documents Required in Support of the Motion:

1. Notice of the MSJ and/or MSA, or both
2. Separate Statement of Material Facts
3. Memo of P's and A's
4. Evidence in support of the MSJ and/or MSA
5. A Request for Judicial Notice, if appropriate

3.1350(d) The Separate Statement in support

(d)(1) The SS must separately identify (a) each cause of action (or affirmative defense) the subject of the motion, and (b) each material fact per each cause of action (or affirmative defense) the subject of the motion

(d)(2) Only material facts (are to be identified)

(d)(3) The format set forth in 3/1350(h) must be utilized and followed

3.1350(e) Documents in Opposition (you must include)

1. Memo P's and A's in opposition to the MSJ and/or MSA
2. Your Separate Statement in opposition to the MSJ an/or MSA
3. Your evidence in opposition to the MSJ and/or MSA
4. Your Request for Judicial notice, if appropriate

3.1350(f) Contents of the Separate Statement in Opposition (must follow 3.1350(h))

1. Column on the left repeats the Fact from the moving papers

2. Column on the right must unequivocally state if the Fact is “disputed” or “undisputed”. If disputed, you must detail the nature of the dispute with supporting evidence identified and cited correctly

3. If you contend that there are Additional Material Facts, you must do so (separately) and follow the same rules, procedures and citation guidelines

3.1350(g) If your evidence in support of the MSJ and/or MSA or Opposition exceeds 25 pages, it must be separately bound (filed and served)

3.1350(h) “Format for separate statements”

“Supporting and Opposing separate statements in a motion for summary judgment must follow this format:”

Note: This CRC, Rule provides specific detailed formats on how to present your Separate Statement Material Facts for both the “Moving Party’s Undisputed Material Facts and Supporting Evidence” in the Column on the left side of your page, and the “Opposing Party’s Response and Supporting Evidence” on the right side of your page

“Supporting and Opposing separate statements in a motion for summary adjudication of issues must this format:”

Note: ****In addition to this Rule providing how to set up columns (per above), this Rule specifically sets forth the “format” on how to separately identify each “ISSUE” for summary adjudication (e.g, a statement of the cause of action or affirmative defense for adjudication)

Note: When creating your separate statement for a MSA, you “must” set forth each and all Material Facts to support each such ISSUE. This may cause you to repeat previously stated material facts. Do not just say – Material Fact Nos. “x” “y” and “z” are incorporated herein. The Rule mandates each Fact to be stated and supported by the evidence (as we have provided above).

3.1352 Objections to evidence

(1) You must follow the format set forth in Rule 3.1354

3.1354 Written objections to evidence

3.1354(a) Timely file and serve your objections with your moving and/or opposing papers

3.1354(b) Objections must be filed separately, must be referenced in the right hand column of the Opposition or Reply to the separate statement, and there are specific details and procedures to follow for each such objection with the Rule providing format options