



# LAW & MOTION

**THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH –  
a Perspective from the Bench**

Hon. Craig Karlan (Ret.)

**ADREvolution**

ADR Services, Inc. 4th Annual MCLE Day  
January 18, 2024

# Speaking Today

## HELLO

Judge Karlan's 20-year judicial career, including 14 years as an Independent Calendar courtroom judge, provides him with keen insight, knowledge and experience garnered from presiding over thousands of general jurisdiction civil matters of every imaginable variety, from filing to trial to post-judgment motions. Today, he will share tips he has learned over his career on the bench.



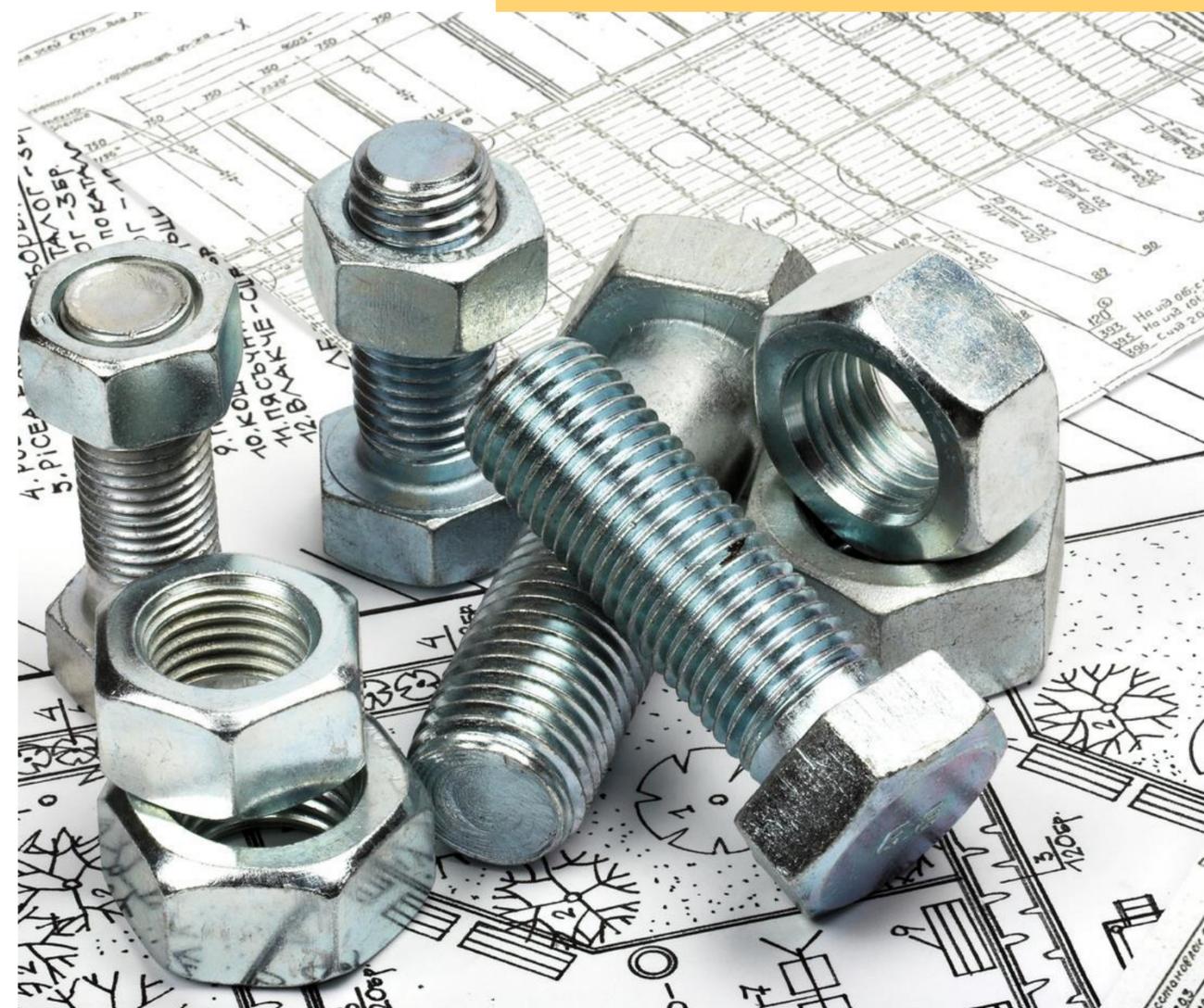
**Hon. Craig Karlan**

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# NUTS & BOLTS REFRESHER



# MOTION FORMATTING

## *General Motions*

Cal. Rules of Court, rules 2.100, et seq.; 3.1110-3.1116

Font “essentially equivalent to Courier, Times New Roman, or Arial” not smaller than 12 points; 1 ½ or double spaced and numbered consecutively.

Do **NOT** shrink the font or decrease line spacing in order to comply with page limits – it is seen immediately and not appreciated.

Page limits – 3.1113(d) Length of memorandum - No opening or responding memorandum may exceed 15 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

Table of contents/table of authorities/summary of argument for briefs longer than 10 pages.

# MOTION FORMATTING

*Summary Judgment / Adjudication Motions*

**Cal. Rules of Court, rule 3.1350**

Same basic formatting requirements as general motions – i.e., line-spacing, font, etc.

Page limits – 3.1113(d) Length of memorandum - No opening or responding memorandum may exceed 20 pages. No reply or closing memorandum may exceed 10 pages. The page limit does not include the caption page, the notice of motion and motion, exhibits, declarations, attachments, the table of contents, the table of authorities, or the proof of service.

Separate statement format (CRC rule 3.1350(h))

Objections - CRC rule 3.1354 sets forth specific requirements for written objections. Each written objection must be numbered consecutively and must: (1) Identify the name of the document in which the specific material objected to is located; (2) State the exhibit, title, page, and line number of the material objected to; (3) Quote or set forth the objectionable statement or material; and (4) State the grounds for each objection to that statement or material. A party submitting written objections to evidence must also submit a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The proposed order must be in one of the two formats set forth in rule 3.1354.

**The Court is required to consider your objections in conjunction with a motion for summary judgment even though they do not comply with the formatting rules.**



**FALSE.**

It is not an abuse of discretion to overrule objections which fail to comply with Cal Rules of Court 3.1354. (*Santos v Crenshaw Mfg., Inc.* (2020) 55 Cal.App.5th 39, 53.)  
The trial court was not required to give a party a second chance at filing properly formatted evidentiary objections or rule on the objections, which were not filed separately but rather were included in the separate statement in opposition to summary judgment motion. (Cal.Rules of Court, Rule 3.1354(b); *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1.)





# MOTION TIMING



## *General Motions*

- Moving papers must be served and filed at least 16 court days before the motion hearing
- Opposing papers – at least 9 court days before the hearing
- Reply papers – at least 5 court days before the hearing (CCP §1005(b))

## *Summary Judgment / Adjudication Motions*

- Moving papers must be served and filed “at least” 75 days before the motion hearing
- Opposing papers – “not less than” 14 calendar days before the hearing (CCP §437c(b)(2))
- Reply papers – “not less than” 5 calendar days before the hearing (CCP §437c(b)(4))
- Motion must be heard no later than 30 days before trial (CCP §437c(a)(3))
- The 30-day time limit should be calculated based on the trial date in existence when the motion is noticed, regardless of whether that is the original trial date. (*Green v. Bristol Myers Co.* (1988) 206 Cal.App.3d 604, 609.)

# POP QUIZ!



**If the due date for a summary judgment motion falls on a weekend or holiday, is the filing deadline extended to the next Monday or Court day?**

**NO.**

Statutes which extend the time within which an act must be completed by one day when the last day to perform the act falls on a Sunday or holiday do not extend the time for an act that must be performed “not less” or “not later” than a given number of days before a designated time. (See *Steele v. Bartlett* (1941) 18 Cal.2d 573, 574.)

# Shortening Notice Period

The court may not shorten the 75-day notice period for a summary judgment or adjudication motion without the parties' consent.

CCP §437c(a) gives the court power to shorten time on other summary judgment time requirements, but not on the 75-day notice of hearing. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 116.) “[T]he motion shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise....” [CCP § 437c, subd. (a)]



# TRUE OR FALSE?

**The 75-day notice period can be shortened by the trial court in cases where trial preference has been granted.**

FALSE

The 75-day notice period cannot be shortened by the Court absent a stipulation by the parties even in trial preference cases. (*McMahon v. Superior Court* (2003) 106 Cal.App.4th 112, 116.)

# Service of Motions



- Electronic Service (Cal. Rules of Court, rule 2.251)
- LASC General Order re electronic service (11/5/18):

*“The Los Angeles County Superior Court will mandate electronic filing of all documents filed in the Limited and Unlimited Civil Divisions by litigants represented by attorneys. (Cal. Rules of Court, rule 2.253(b).) The effective date for voluntary electronic filing is November 13, 2018 for Limited and December 3, 2018 for Unlimited Civil. The effective date for mandatory electronic filing is December 3, 2018 for Limited Civil, and January 2, 2019 for Complex and non-Complex Unlimited Civil.”*

- If your case is pending in another County, check service rules.

# POP QUIZ!



**If your e-filed discovery motion is rejected by the Clerk's Office, will your filing be deemed timely?**

**YES.**

Cal. Rules of Court, rule 2.259(c) - Delayed delivery  
If a technical problem with a court's electronic filing system prevents the court from accepting an electronic filing on a particular court day, and the electronic filer demonstrates that he or she attempted to electronically file the document on that day, the court must deem the document as filed on that day.

# CAUTION

## AVOID THIS PITFALL!

**If a Complaint or other initial pleading is delayed due to a technical problem with the court's electronic filing system, the Court WILL NOT deem the document as filed on the day of the attempted filing.**

Cal. Rules of Court, rule 2.259(c) regarding delayed delivery DOES NOT apply to the filing to a complaint or any other initial pleading in an action or proceeding.

# PLEADING MOTIONS

## DEMURRER

CCP §430.10

## MOTION TO STRIKE

CCP §§435, 436, 437

## MOTION FOR JUDGMENT ON THE PLEADINGS

CCP §438

## ANTI-SLAPP MOTION TO STRIKE

CCP §425.16

**In the absence of an agreement, a plaintiff may file an amended complaint any time prior to or at the hearing on the demurrer.**

**FALSE.**

A party must file and serve the amended pleading “no later than the date for filing an opposition to the demurrer or motion to strike.” A party may amend the pleading after the date for filing an opposition to the demurrer or motion to strike, upon stipulation by the parties. (CCP §472(a).) The pleading can only be amended once as a matter of right without leave of court.

**True or False**



# TRUE OR FALSE?

**Detailed written correspondence satisfies the “meet and confer” requirement for a demurrer as per CCP §430.41(a).**

FALSE

“The demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Pop Quiz



**If a First Amended Complaint has been filed as a matter of right with no demurrer pending, how many further amendments are allowed in response to subsequently filed demurrers?**

- 3** Passed in 2016 Senate Bill 383, CCP §430.41(e)(1) provides for a total of three amendments “in response to a demurrer.” The three-amendment limit shall not include an amendment made without leave of the court pursuant to Section 472, provided the amendment is made before a demurrer to the original complaint or cross-complaint is filed.

# JURISDICTIONAL MOTIONS

## MOTION TO QUASH SERVICE OF SUMMONS

CCP §418.10

## MOTION TO QUASH FOR LACK OF PERSONAL JURISDICTION

CCP §418.10(a)(1)

## MOTION TO DISMISS FOR INCONVENIENT FORUM

CCP §§418.10(a)(2), 410.30

## CHALLENGING SUBJECT MATTER JURISDICTION

(by demurrer, motion for judgment on the pleadings, summary judgment or affirmative defense only – not by a motion to quash)

## MOTION TO DISMISS FOR DELAY IN PROSECUTION

CCP §581, et seq.



# POP QUIZ!



**Does filing an answer, demurrer and/or motion to strike together with a motion to quash constitute a general appearance in the action?**

**NO.**

Under CCP §418.10(e), added in 2002, a defendant or cross-defendant may make a motion to quash service of summons, to stay or dismiss on the ground of inconvenient forum, or to dismiss for delay in prosecution, and simultaneously answer, demur, or move to strike the complaint or cross-complaint. The answer, demurrer, or motion to strike will not be deemed to constitute a general appearance unless the court denies the motion to quash, and, if the motion is denied, the general appearance will not be deemed to have been made until entry of the order denying the motion. (CCP §418.10(e)(1).)



# TRUE OR FALSE?

**If the issue of lack of subject matter jurisdiction is not raised at the outset of the case, it is waived.**

FALSE

Since lack of subject matter jurisdiction renders the proceedings void, the defect can be raised at any time. Failure to raise it in the pleadings does not waive the defect. (CCP § 430.80; see *Parrott v. Mooring Townhomes Ass'n, Inc.* (2003) 112 Cal.App.4th 873, 876.)

# PROVISIONAL REMEDIES

**PETITION FOR  
TEMPORARY  
RESTRAINING ORDER**

CCP §527

**MOTION FOR  
PRELIMINARY  
INJUNCTION**

CCP §526

**APPOINTMENT  
OF A RECEIVER**

CCP §564, ET SEQ.

**WRIT OF  
ATTACHMENT**

CCP §481.010, ET SEQ.

**WRIT OF  
POSSESSION**

CCP §512.010, ET SEQ.

# DISCOVERY MOTIONS



Motion to compel initial or further discovery responses (CCP §2030.010, et seq.)



Motion to quash subpoena (CCP §1987.1)



Motion for protective order (CCP §§2017.020, 2019.030)



Motion to compel deposition (CCP §2025.260)



Motion to compel compliance with subpoena (CCP §2025.480)



# KEY DISCOVERY ISSUE

## PROVIDING VERIFIED RESPONSES

- Unverified responses are tantamount to no response at all and any asserted objections are waived. (CCP §§2030.250, 2031.250, 2033.250; *Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.)

*However...*

- If the response is hybrid, i.e., includes both responses and objections to the demands, and is unverified, the propounding party is entitled to an order compelling a verified response. (*Food 4 Less Supermarkets, Inc. v. Superior Court* (1995) 40 Cal.App.4th 651, 658.) Objections to the response to inspection demands need not be verified; therefore, the propounding party's failure to verify the document does not result in a waiver of the objections or render them untimely. (Id.)

# MOTION TO COMPEL FURTHER RESPONSES

## 45-DAY CLOCK

A notice of motion to compel a further interrogatory response must be served within 45 days of service of the verified response at issue or when any verified supplemental response was served. (CCP § 2030.300(c).)

\*But see: *Golf & Tennis Pro Shop, Inc. v. Superior Court* (2022) 84 Cal.App.5th 127, 134 - Responses consisting of both unverified factual responses and objections do not start the 45-day clock; the clock on a motion to compel begins to run once “verified responses” or “supplemental verified responses” are served.

The 45-day period is extended under Code of Civil Procedure section 1013 when the response was served by mail, overnight delivery, fax, or electronic service (CCP § 2016.050; CCP § 1010.6). The parties may agree in writing to a specific later date past the 45-day limit to give notice of the motion. Failure to file the motion within the 45-day limit, or on or before the agreed date, constitutes a waiver of the propounding party’s right to compel a further response to the interrogatories. (CCP § 2030.300(c); see *Vidal Sassoon, Inc. v. Superior Court* (1983) 147 Cal.App.3d 681, 685.)

# CODE-COMPLIANT RESPONSES

## MAKE SURE YOUR RESPONSE IS CODE-COMPLIANT!

- Saying that “responsive documents will be produced” is NOT enough. A statement that the responding party will comply with the demand must indicate that production, inspection, and any related activities demanded will be allowed, either in whole or part. Where documents or tangible things are demanded, the response should state that all demanded documents or things in the possession, custody, or control of the responding party will be included in the materials produced, unless the responding party objects to the demand. (CCP §2031.220.)
- If the responding party makes a representation of inability to comply with a particular demand, that party must affirm that a diligent search and reasonable inquiry was made in an effort to comply. This statement must also specify the reason for the inability to comply: whether due to the fact that the item or category has never existed; that it has been destroyed, lost, misplaced, or stolen; or that it has never been or is no longer in the possession, custody, or control of the responding party. Finally, the representation must set forth the name and address of any person or organization known or believed by the responding party to have possession, custody, or control of the item or category. (CCP §2031.230.)
- The responding party must then organize, label and produce the documents to correspond with the categories demanded. (CCP §2031.280.)

# BE AWARE OF SB 235

SB 235 will require each party who has appeared in a civil action to provide “initial disclosures” to the other parties to the action within sixty (60) days of a demand by any party to the action unless modified by the stipulation of the parties. The bill would require a party making initial disclosures of persons or records to additionally disclose persons or records that are relevant to the subject matter of the action, except as specified, and to disclose information and records regarding insurance policies or contracts that would make a person or insurance company liable to satisfy a judgment.

A party’s initial disclosures must be verified and based on information reasonably available to the party at the time of the response. Importantly, a disclosing party cannot withhold its initial disclosures (1) on the grounds that it has not fully investigated the case, (2) because it challenges the sufficiency of the other party’s disclosures, or (3) because the other party has not made its initial disclosures.

## NOTE

While the disclosure requirements are new, they do not completely replace the other provisions in the law. As such, the other provisions of the Civil Discovery Act (see CCP § 2016.010 et seq), and so the other provisions likely remain.

Notably, unlike the provisions in Federal Court, these provisions are not “self-executing.” Instead, the disclosures are required only after

**26** a written demand by a party to the action.

# Motion for Reconsideration

## CCP §1008(a)

- ✓ Must be filed within ten days of notice of entry of the order;
- ✓ Must be based on new or different facts, circumstances or law;
- ✓ Must be brought before the same judge who made the order;
- ✓ Must be accompanied by a declaration stating “what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.”

Pop Quiz



**If your motion is denied, can you seek the same relief later in a renewed motion?**

**Yes (CCP §1008(b))**

but it must be based on new or different facts, circumstances or law not previously considered by the Court and must seek the same relief. A renewal motion is proper even if the moving party concedes that the court's initial ruling was correct, but is now erroneous in light of changed circumstances.

*(Deauville Restaurant, Inc. v. Superior Court (2001) 90 Cal.App.4th 843, 848).*

# Application to Renew Motion

## CCP §1008(b)

- ✓ Is not subject to the 10-day filing limitation period
- ✓ Unlike a motion for reconsideration, a renewed motion is a pure renewal of the first motion. (*California Correctional Peace Officers Ass'n v. Virga* (2010) 181 Cal.App.4th 30, 42-43).
- ✓ A renewal motion is proper even if the moving party concedes that the court's initial ruling was correct, but is now erroneous in light of changed circumstances. (*Deauville Restaurant, Inc. v. Superior Court* (2001) 90 Cal.App.4th 843, 848).
- ✓ Must seek the same relief based on new or different facts, circumstances or law which were not considered in conjunction with the first motion.
- ✓ Can only be brought by the original moving party.
- ✓ Does not have to be heard by the same judge who first heard the motion.



# RECONSIDERATION ON THE COURT'S OWN MOTION



## TWO BASES



### FIRST

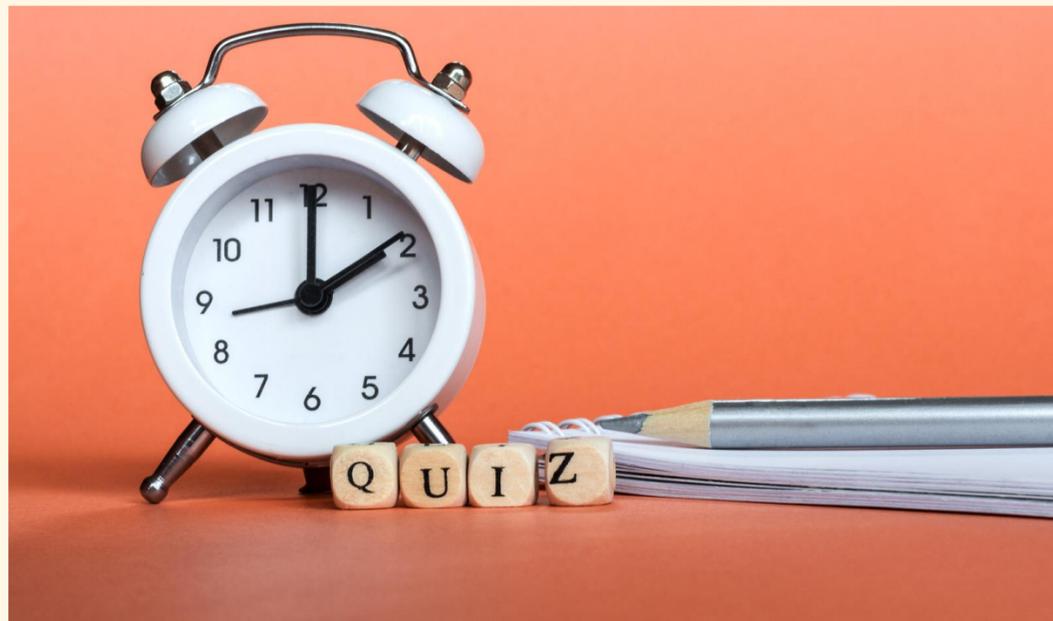
The court has statutory authority to reconsider a prior order and enter a new order if, at any time, it determines there has been a change in law that warrants a different outcome. (Code Civ. Proc., § 1008, subd.(c)).



### SECOND

And broader, a court that concludes its prior order was in error has jurisdiction to reconsider that prior order and enter a new order on its own motion. In 2005, the Supreme Court authorized such a procedure in *Le Francois v. Goel* (2005) 35 Cal.4th 1094, without expressly restricting the bases for such reconsideration to new facts or law.

# Pop Quiz



## Can the Court reconsider or otherwise change a judgment once entered?

**NO.**

After the entry of judgment, a motion for reconsideration or renewal as to matters included in the judgment or order is improper. (*Eddy v. Sharp* (1988) 199 Cal.App.3d 858, 863; *Ten Eyck v. Industrial Forklifts* (1989) 216 Cal.App.3d 540, 545.) A court may reconsider its order granting or denying a motion and may even reconsider or alter its judgment so long as judgment has not yet been entered. Once judgment has been entered, however, the court may not reconsider and loses its unrestricted power to change the judgment. It may correct judicial error only through certain limited procedures such as motions for new trial and motions to vacate the judgment.” (*Ramon v. Aerospace Corp.* (1996) 50 Cal.App.4th 1233, 1236.)

# *Dispositive Motions*

## **MOTION FOR SUMMARY JUDGMENT**

CCP §437c

## **MOTION FOR SUMMARY ADJUDICATION**

CCP §437c(f))

# Can the Court grant leave to amend in ruling on a motion for summary judgment?

# YES.

Pop Quiz



A defendant's motion for summary judgment necessarily includes a test of the sufficiency of the complaint. If summary judgment is sought based on a curable defect in the complaint, it can be treated as a motion for judgment on the pleadings and leave to amend granted. (*People ex rel. Dept. of Transportation v. Outdoor Media Group* (1993) 13 Cal.App.4th 1067, 1074.)

The court may consider an unpled affirmative defense if the complaint alleges facts supporting the defense and the defense is fairly "raised and met" in the summary judgment papers. (*Wang v. Nibbelink* (2016) 4 Cal.App.5th 1, 10 [disapproved on another ground].)

# What is required for a continuance of a summary judgment or adjudication motion based on CCP §437c(h)?

- Continuance of a summary judgment hearing is not mandatory when no affidavit is submitted or the necessary showing is not made. (*Menges v. D.O.T.* (2020) 59 Cal.App.5th 13, 25-26.)
- The party moving for a continuance must show “facts essential to justify opposition may exist.” Such request can be made through affidavits accompanying the opposition itself, or “by ex parte motion at any time on or before the date the opposition response to the motion is due.”
- Waiting until after the opposition is due – or making the request at the hearing - is almost certainly a losing strategy, even when the need for a continuance is the result of a defendant’s gamesmanship in discovery. (*Park v. First American Title Co.* (2011) 201 Cal.App.4th 1418, 1428.)

# CAUTION

## AVOID THIS PITFALL!

- **Do not rely on a request for continuance pursuant to CCP §437c(h) as the sole ground for your opposition.**
- **If there is a proper basis for a continuance, seek relief by ex parte application well before your opposition is due so you can raise substantive grounds if your continuance request is denied.**

Even if properly formatted, the Court is **not required to rule on all objections asserted in conjunction with a summary judgment or adjudication motion.**

■ ■ ■  
**TRUE.**

In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review. (Code Civ. Pro. §437c(q).)





# DETERMINATION OF GOOD FAITH SETTLEMENT

CCP §877.6

**TWO OPTIONS**

**1.**

Noticed motion by settling party/parties (Section 877.6(a)(1))



**2.**

Notice of settlement, held by the Court for 20 or 25 days to enable a motion to contest good faith to be filed by non-settling party/parties (Section 877.6(a)(2))

# THE TECH-BILT FACTORS

## ***Tech-Bilt, Inc. v. Woodward-Clyde & Assoc. (1985) 38 Cal.3d 488, 498-501.***

The *Tech-Bilt* factors can be summarized as follows:

- A rough approximation of plaintiff's total recovery and the settlor's proportionate liability ("ballpark");
- The amount paid in settlement;
- The allocation of settlement proceeds among defendants;
- A recognition that a settlor should pay less in settlement than he would if he were found liable after a trial;
- The financial conditions and insurance policy limits of settling defendants; and
- The existence of collusion, fraud, or tortious conduct aimed to injure the interests of the nonsettling defendants.

Failure to allocate settlement proceeds can render settlement uncertain. (See *L.C. Rudd & Son, Inc. v. Superior Court* (1997) 52 Cal.App.4th 742, 747 [allocation required where each defendant was potentially liable for different areas of damage in the case].)

**Does a determination of good faith settlement bind all other tortfeasors, even nonparty tortfeasors?**

**NO.**

Pop Quiz



A good faith determination is not binding on a nonparty joint tortfeasor whose relationship to the subject matter of a plaintiff's claim was known or reasonably should have been known to the settling parties and which was joined in a tort action after the § 877.6 settlement determination. (*Singer Co. v. Superior Court* (1986) 179 Cal.App.3d 875; *Pacific Estates, Inc. v. Superior Court* (1993) 13 Cal.App.4th 1561, 1571 [The "likely defendant" brought into an action only after a good faith determination of settlement is not bound by that determination].)

# MOTIONS FOR SANCTIONS



## CCP §128.5



- Based on actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay.
- **Subjective** bad faith standard.
- The motion must be made separately from any other motion or request, and must describe the specific alleged action or tactic. (CCP § 128.5(f); *Changsha Metro Group Co., Ltd. v. Peng Xufeng* (2020) 57 Cal.App.5th 1, 8.)

## CCP §128.7



- Based on the presentation of a pleading, motion or similar paper to the court in violation of the implied “certification” as to its legal and factual merit.
- **Objective** standard as to whether the paper filed is frivolous, legally unreasonable or without factual foundation.
- Motion must be made separately from any other motion, opposition or other pleading. (CCP § 128.7(c)(1); see *Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 699.)

# MOTIONS FOR SANCTIONS



## SAFE HARBOR PROVISION

The 21-day “safe harbor” provisions of CCP §128.7 do not apply to most of section 128.5—however, a safe harbor procedure is imposed under 128.5 for making or opposing a written motion or the filing and service of a complaint, cross-complaint, answer or other responsive pleading that can be withdrawn or appropriately corrected. (CCP §128.5(f); *Nutrition Dist., LLC v. Southern SARMS, Inc.* (2018) 20 Cal.App.5th 117, 127-130.)

### TWO-STEP PROCEDURE:

The moving party first serves the sanctions motion on the offending party without filing it. The opposing party then has 21 days to withdraw the improper pleading and avoid sanctions (the so-called “safe harbor” waiting period).



At the end of the waiting period, if the pleading is not withdrawn, the moving party may then file the motion. (CCP § 128.7(c)(1).)

Strict compliance with the safe harbor provisions is required; failure to comply precludes an award of sanctions. (*Transcon Financial, Inc. v. Reid & Hellyer, APC* (2022) 81 Cal.App.5th 547, 551; *Broadcast Music, Inc. v. Structured Asset Sales, LLC* (2022) 75 Cal.App.5th 596, 605-606) [the sanctions motion can be filed no earlier than 22 days after service of the unfiled, safe harbor pleading].)

# MOTIONS IN LIMINE



Motions in limine may be used to exclude any evidence to which counsel could object at trial, either as irrelevant or as subject to discretionary exclusion because of its unduly prejudicial effect. (*Clemens v. American Warranty Corp.* (1987) 193 Cal.App.3d 444.)

**READ KELLY BEFORE DRAFTING YOUR MOTION IN LIMINE!**

Matters of day-to-day trial logistics and common professional courtesy should not be the subject of motions in limine. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 671.)

- Courts are increasingly wary of motions in limine being drafted as procedural shortcuts to the protections provided and required in statutory motions. Thus counsel should not attempt, for example, to bypass the statutory requirements of a motion for summary judgment in the guise of a motion in limine. (*R & B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140 Cal.App.4th 327; *County of Glenn v. Foley* (2012) 212 Cal.App.4th 393.)

# MISCELLANEOUS MOTIONS

Motion to  
Expunge Lis  
Pendens

CCP §405.30

Motion for Relief  
from Default,  
Judgment,  
Dismissal, Order

CCP §473(b)

Motion to be  
Relieved as  
Counsel  
Cal. Rules of  
Court, rule 3.1362

Notice of Related  
Cases

Cal. Rules of  
Court, rule 3.300

Motion to  
Consolidate Cases  
CCP §1048, Cal.  
Rules of Court, rule  
3.350

Motion to  
Disqualify Counsel  
CCP §128(a)(5)\*

\*see also *People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145; *Doe v. Yim* (2020) 55 Cal.App.5th 573, 581.)

Motion for  
Attorneys' Fees  
and/or Costs

Motion for  
Costs/Expert  
Witness fees  
CCP §998

Motion for  
Judgment  
Notwithstanding  
the Verdict  
CCP §629

Motion for New  
Trial  
CCP §§656,  
657, et seq.

Motion to Vacate  
and Enter a  
Different  
Judgment  
CCP §663

Motion to Correct  
Judgment for  
Clerical Error  
CCP §473(d)

Motion to Set  
Aside Void  
Judgment  
CCP §473(d)

Motion for Relief  
from Judgment  
CCP §473(b)

Motion to Stay  
Enforcement of  
Judgment  
CCP §918

Motion to Amend  
Judgment to Add  
Judgment  
Debtors  
CCP §187\*

Application to  
Renew Judgment  
CCP §683.110,  
et seq.

# POST- TRIAL and POST- JUDGMENT MOTIONS

\*see also *Wolf Metals Inc. v. Rand Pacific Sales, Inc.* (2016) 4 Cal.App.5th 698, 703; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 508.)

**CAUTION**

# **COMMON PITFALLS IN BRIEFS**



# GREAT CHOICES FOR MOTION BRIEFS



- Lead with your strongest argument.
- Do not use every page allotted just because you can.
- Own the weaknesses in your position on issues.
- Focus on why you have the winning position.
- A well-written brief will get the Judge's attention.
- For complex motions, provide hard copies of exhibits in a well-organized Notebook.
- Include an appropriate discussion of facts and procedural history.
- Request a realistic sanctions amount, where appropriate, and follow the notice requirements. (CCP §2023.040)



- Not following formatting rules.
- Separate statement for summary judgment must include citation to evidence by exhibit, title, page, and line numbers. (Cal. Rules of Court, rule 3.1350(f)(2))
- Run on sentences and paragraphs.
- Referencing other filings without including them.
- Citing inapplicable cases or misstating the import of the ruling.
- Vitriol/nastiness towards opposing counsel or party.
- Typos – spell the Judge’s name right!
- Overuse of CAPITALIZATION, bolding, underlining and italics.

# POOR CHOICES FOR MOTION BRIEFS



# POOR CHOICES FOR MOTION BRIEFS

- **Not** following **FORMATTING RULES**.
- Separate statement for summary judgment must include citation to evidence by exhibit, title, page, and line numbers. (Cal. Rules of Court, rule 3.1350(f)(2))
- **RUN ON SENTENCES AND PARAGRAPHS.**
- **Referencing other FILINGS WITHOUT including them.**
- Citing **inapplicable** cases or **misstating** the **import** of the ruling.
- **VITRIOL/NASTINESS** towards opposing counsel or party.
- **TYPOS** – SPELL THE **JUDGE'S NAME RIGHT!**
- Overuse of capitalization, *bolding*, **UNDERLINING** and *italics*.

**NOW THAT YOU'VE SUBMITTED AN  
AMAZING BRIEF...**

**DO NOT SNATCH DEFEAT FROM  
THE JAWS OF VICTORY**

**BY MAKING A MISTAKE  
DURING ORAL ARGUMENT**

A close-up photograph of a shark's open mouth, showing its sharp teeth and the interior of its mouth. The word "DEFEAT" is written in large, bold, red, sans-serif capital letters across the shark's mouth, appearing as if it is being snatched from the jaws of victory.

# **THE GOOD, THE BAD AND THE UGLY WHEN IT COMES TO ORAL ARGUMENT...**

**To be honest, does it even  
really matter?**



# INEFFECTIVE TACTICS FOR ORAL ARGUMENT

- Talking over or to each other.
- Regurgitating/repeating what's in your brief.
- "Have you read my brief?" be aware of your own brief.
- Arguing with the Judge. Much more effective to say, "I see your concern, but..." or "I see your point, but..."
- Citing a case which doesn't stand for what the string cite states it does. Read each case you put in front of the Court. (Particularly in close cases, give me the case that helps your side the most.)
- If the Court interrupts or asks a question, answer it. The Court is signaling a concern to you. Run with it, don't ignore it.
- Having to get the last word. (It results in a far lengthier hearing than necessary. Makes it seem as if I don't understand the issues. Results in incessant repetition. Suggests to me if it happens more than once that I need to set time limits during trial, because witness questioning will be the same!)
- Telling the Judge to stop interrupting you.
- "I'm going across the street"

- “Your Honor, everything I would argue is already in my moving/oppo/reply brief. Is there any issue you would like me to address or expound upon? Otherwise, I’ll defer to opposing counsel and reserve my right to respond, if that would be okay?”
- Be pinpoint precise and efficient. Less truly is more.
- Avoid repeating the same points over and over.
- Concede when there is no case on point. “You’re going to have to make new law.”
- Be prepared. Know your facts and know the law inside and out.
- If the motion is really important, I would make a personal appearance in Court. It allows for better oral argument.

# **EXTREMELY EFFECTIVE TACTICS FOR ORAL ARGUMENT**

*Thank You*

**ANY  
QUESTIONS OR  
COMMENTS?**

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**Hon. Craig Karlan**

ADR Services, Inc.