

Instructions: Responding to a Motion to Dismiss the Complaint

This template was prepared by the Justice & Diversity Center, a nonprofit organization, and is not an official court form. It can be used in certain civil lawsuits in the Northern District Court of California. *Using this template does not guarantee any result in your case.*



HOW TO GET LEGAL INFORMATION AND ADVICE

This packet provides general guidance about opposing a motion to dismiss. *Before filing this document*, make an appointment for free legal information and advice at one of the Legal Help Centers.



If the case is assigned to a judge in the San Francisco, Oakland, or Eureka federal courthouse, do one of the following:



Call the appointment scheduling line for the Federal Pro Bono Project: 415-782-8982



Sign up in the appointment book at either:

450 Golden Gate Ave., 15th Floor, Room 2796, San Francisco or
1301 Clay Street, 4th Floor, Room 470S, Oakland



Email us at federalprobonoproject@sfbbar.org

This email is to schedule appointments only-no legal advice is given over email.



If the case is assigned to a judge in the San Jose federal courthouse, do one of the following:



Call the appointment scheduling line for the Federal Pro Se Program: 408-297-1480

Monday to Thursday 9:00 am - 12:00 pm, drop in at

The Law Foundation of Silicon Valley, 152 North 3rd St., 3rd Floor, San Jose



Monday to Thursday 1:00 pm - 4:00 pm, drop in at

280 South 1st Street, 2nd Floor, Room 2070, San Jose



WHEN TO RESPOND TO A MOTION

You have only 14 days to respond to a motion. ⚠️ The time to respond runs from the date the motion was filed. Check the certificate of service, which should be attached to or included with the Motion papers.



DECIDE HOW TO RESPOND TO THE MOTION

If you have not already filed an amended complaint, and you think you can fix the problems the Defendant identified in the Motion to Dismiss, you may be able to file an Amended Complaint instead of an Opposition. Make an appointment at the Legal Help Center (see page 1) for advice. The deadline for filing an Amended Complaint is the same as the deadline for filing an Opposition.



HOW TO COMPLETE THIS OPPOSITION TO MOTION TO DISMISS TEMPLATE

- Fill in the case information.** Fill in all blanks on the first page. The date and time for the motion hearing can be found on the Defendant’s Motion.
- Write in the facts.** Write a short version of the facts you wrote in the Complaint. If there are facts that you did not include in the Complaint, but might make a difference in whether the Court dismisses your Complaint or not, add them here.
- Respond to each of the Defendant’s arguments.** A defendant usually makes several points in the “Argument” section of its Motion to Dismiss. You should respond to each point. Most Memoranda cannot be longer than 15 pages (excluding title page). If you have questions about the arguments or how to respond to them, or are concerned about going over the page limit, contact the Legal Help Center (see page 1).
- Add required pages.** If your Opposition is longer than 10 pages (excluding title page), you must include a table of contents and table of authorities; these should be inserted immediately after the title page. If the judge in your case requires it, you may need to submit a proposed order. Review the judge’s Standing Order and Scheduling Orders: <http://www.cand.uscourts.gov/judges>.
- Review, number the pages, and sign.** Read the entire document to make sure it is clear, correct and complete. Fill in the page numbers and the total on each page. Sign and date.
- Prepare the Certificate of Service.** Each document that you file must be “served” on each other party, usually by sending it in the mail. Follow the instructions on the Certificate of Service.
- Mark your calendar.** Put the hearing date on your calendar, and be sure to show up at Court. *You must follow whatever decision is made at or after the hearing and any instructions from the Court.*



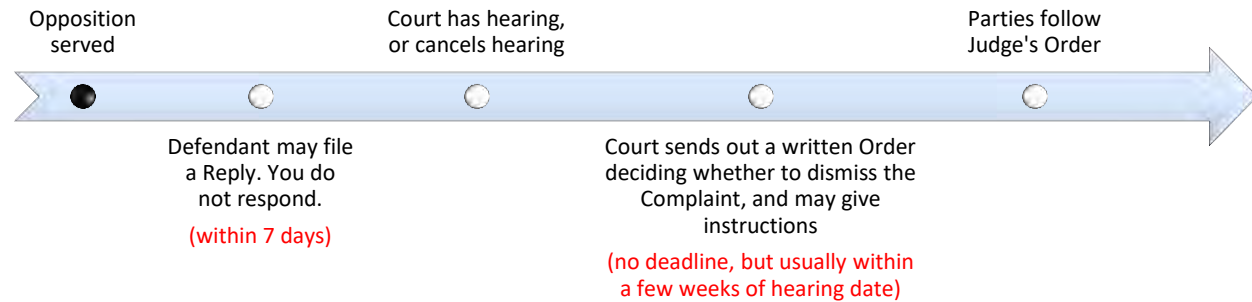
FILING AND SERVING YOUR OPPOSITION PAPERS

1. **Make copies.** Once the documents are complete, make three copies of each. On one copy of the documents, write “Chambers” on the top in pen. If there is more than one plaintiff or defendant, you will also need one copy for each of them.
2. **File the Opposition.** Deliver or mail the *original plus two copies* of the Opposition and the Certificate to the Clerk’s Office at the courthouse where the Judge for your case is located. The Clerk will take the original and one copy. The other copy is for you to keep after it is stamped by the Clerk. If you file by mail, include a self-addressed, stamped envelope so that the Clerk can send a copy back to you.
3. **Serve the Opposition.** Be sure the Opposition and Certificate are served on each party.



TIMELINE: AFTER OPPOSITION PAPERS ARE FILED

The timeline below lists what generally happens after the Opposition is filed. The Legal Help Centers (see page 1) can provide guidance about these steps, and have many other templates for you to use in your case.



STAY UP TO DATE

1. **Update your contact information.** File a notice with the Clerk right away if your address, email, or phone number changes, or you may miss important deadlines, causing you to lose your case.
2. **Check your mail.** Be sure to check regularly for documents from the Court and opposing side.
3. A list of all of the documents that have been filed, and (usually) the documents themselves can be viewed online. See Chapter 7 of the Handbook for Pro Se Litigants (see below), and contact the Legal Help Center for information about how to access the documents (see page 1).



UNDERSTANDING THE LAWS AND RULES

The Legal Help Centers (see page 1) are the best resource for people without lawyers. There are other resources for understanding the laws and rules of the Court:

1. **Handbook for Pro Se Litigants.** The Handbook is a procedural guide for people who are representing themselves. It was prepared by the Court and is available at the Clerk's Office or on the Court's website at www.cand.uscourts.gov/prosehandbk.
2. **Legal Research Guide for Pro Se Litigants.** The Guide provides information for people who are representing themselves about how to do legal research, like finding statutes and decisions in other cases. It was prepared by the Justice & Diversity Center and is available at the Legal Help Centers and at www.cand.uscourts.gov/Legal-Help-Center-Templates.
3. **Federal Rules of Civil Procedure.** These Rules explain the procedures from filing through trial for all civil cases in the federal courts across the country, and are available at www.uscourts.gov/sites/default/files/rules-of-civil-procedure.pdf.
4. **Local Rules.** The Local Rules follow the same numbering as the Federal Rules of Civil Procedure, but generally provide more detail. They apply in this District only, and are available at www.cand.uscourts.gov/localrules/civil.

1 Your name: _____
2 Address: _____
3 _____
4 Phone Number: _____
5 E-mail Address: _____

6 Pro se

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 Division [check one]: San Francisco Oakland San Jose Eureka

11
12 _____) Case Number: _____
13 _____)
14 Plaintiff,) **OPPOSITION TO MOTION TO DISMISS**
15 vs.)
16 _____) DATE: _____
17 _____) TIME: _____
18 _____) JUDGE: Hon. _____
19 _____)
20 _____)
21 Defendant.)

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CERTIFICATE OF SERVICE OF DOCUMENT OTHER THAN COMPLAINT

** You must serve each document you file by sending or delivering to the opposing side. Complete this form, and include it with the document that you file and serve.**

1. **Case Name:** _____ v. _____

2. **Case Number:** _____

3. **What documents were served?**

Opposition to Motion to Dismiss

4. **How was the document served?** *[check one]*

Placed in U.S. Mail

Hand-delivered

Sent for delivery (e.g., FedEx, UPS)

Sent by fax (if the other party has agreed to accept service by fax)

5. **Who did you send the document to?** *[Write the full name and contact information for each person you sent the document.]*

_____	_____
_____	_____
_____	_____
_____	_____

6. **When were the documents sent?** _____

7. **Who served the documents?** *[Whoever puts it into the mail, faxes, delivers or sends for delivery should sign, and print their name and address. You can do this yourself.]*

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

Signature: _____

Name: _____

Address: _____
