

# Motion to Compel Discovery Responses

Sometimes, as you conduct discovery in your civil case, the opposing side fails to respond to your formal discovery requests. If the opposing side does not respond to your form interrogatories, special interrogatories, or request for production, you may file a motion seeking an order compelling the opposing party to respond. This Guide provides step-by-step instructions for seeking such an order. If the opposing side served responses that were incomplete or otherwise void (e.g., not verified), you would need to file a motion to compel further responses, which is not described in this Guide. Please ask at the Reference Desk for information on that procedure.

# **Templates and Forms**

- Meet and Confer Letter for Motion to Compel Discovery Responses Template RTF (https://saclaw.org/wpcontent/uploads/2023/04/sbs-motion-to-compel-discovery-responses-meet-and-confer.rtf)
- Motion to Compel Discovery Responses (Interrogatories) Template RTF (https://saclaw.org/wpcontent/uploads/2023/04/sbs-motion-to-compel-discovery-responses-interrogatories.rtf)
- Motion to Compel Discovery Responses (Request for Production) Template RTF (https://saclaw.org/wpcontent/uploads/2023/04/sbs-motion-to-compel-discovery-responses-production.rtf)

#### **Related Step-by-Step Guides**

Motion to Deem Facts Admitted (https://www.saclaw.org/resource\_library/motion-to-deem-facts-admitted/) Proof of Service by Mail (https://www.saclaw.org/resource\_library/serving-documents-by-mail/) Personal Service (https://www.saclaw.org/resource\_library/personal-service/)

# **Step-by-Step Instructions**

## 1. Meet and Confer

Before you file your motion, you must first attempt to "meet and confer" with the opposing counsel or self-represented party. This typically means sending a letter that informs the opposing attorney or self-represented litigant that the deadline to respond has passed, and providing him or her a reasonable time to respond, after which you would file a motion to compel responses.

Download a customizable template of a meet and confer letter:

 Meet and Confer Letter for Motion to Compel Discovery Responses Template (https://www.saclaw.org/wpcontent/uploads/2023/04/sbs-motion-to-compel-discovery-responses-meet-and-confer.rtf)



A reasonable time to respond to your letter could be two weeks or longer if the interrogatories or requests for production are particularly complicated. The "meet and confer" requirement is your opportunity to demonstrate to the court that you are making a "reasonable and good faith attempt at an informal resolution." <u>California</u> Code of Civil Procedure (CCP) § 2016.040

(http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CCP&sectionNum=2016.040.). A sample "meet and confer" letter is included at the end of this Guide.

Although not required, it is a good idea to have someone who is over 18 and not a party to the case mail the letter for you, and complete a <u>Proof of Service by First Class Mail (POS-030) (http://www.courts.ca.gov/documents/pos030.pdf)</u>. That way, if you are forced to file a motion with the court, you can attach the proof of service as an exhibit to your motion. For more information, see the Step-by-Step guide on <u>Proof of Service by Mail (https://www.saclaw.org/resource\_library/serving-documents-by-mail/)</u>.

# 2. Reserve Your Hearing Date and Determine Deadlines for Filing and Serving

This information is for Sacramento. If your case is in a different county, do not follow these instructions. Instead, call the clerk or visit the court website in your county to find the correct information.

#### Determine the department and time of the motion

This is considered a "Law and Motion" matter, which are heard in Department 53 at 1:30 p.m. or Department 54 at 9:00 a.m., Tuesday-Thursday. To determine which department your hearing will be in, check your case number. Odd numbered cases are heard in Dept. 53, even numbered cases in Dept. 54. (There are occasional exceptions, so if you've been assigned to one or the other in the past, use that one.)

#### Reserve the date for the hearing

In Sacramento's Departments 53 and 54, you must reserve a court date through the court's online reservation system.

To use the online system, go to the <u>Sacramento Court's Public Portal (https://prod-portal-sacramento-ca.journaltech.com/public-portal/)</u> and choose "Reservation System (CRS)." You must have a free account on the system to use it.



Before you log on or call, figure out if there are any days you will *not* be available during the next couple of months. For instance, you don't want to pick a date when you know you will be out of town.

You must choose a date far enough in the future that you can both *file* and *serve* your motion on time. Scheduling it four weeks in advance generally gives a comfortable margin for most types of motions. Usually, the first available date will be further away than that.

#### Determine the legal deadline to file the motion in court

Tip: File the motion as soon as possible. Your reservation is not final until the motion has been filed and any fees paid.

The last legal day to file with the court is at least sixteen *court* (business) days prior to the motion date (<u>CCP</u> § <u>1005</u> (http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CCP&sectionNum=1005.)</u>). "Court days" are Monday through Friday, excluding court holidays. To determine whether a particular filing date will meet this deadline, start counting backwards on the day before your hearing until you reach the sixteenth court day. (<u>CCP</u> § <u>12c</u> (https://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?sectionNum=12c.&lawCode=CCP)

For example, suppose your reservation is for Monday, June 18. You would start counting backward using the previous court day, Friday, June 15, as day one, as shown in the calendar below. Skip weekends and court holidays (there is one court holiday in this example, which is Memorial Day, May 28). The sixteenth court day before the hearing would be May 24, which would be the last day that the motion could be filed.





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MAY								JUNE						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	
		1	2	3	4	5						1	$\odot$	
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6	7	8	day for s rolls ove	ervice by	/ mail	12	8	<b>4</b> Day 10	<b>5</b> Day 9	<b>6</b> Day 8	<b>7</b> Day 7	<b>8</b> Day 6	8	
13	14	15	16	17	18 Last day to serve by mail	19 Day 5	1	<b>11</b> Day 5	<b>12</b> Day 4	<b>13</b> Day 3	<b>14</b> Day 2	<b>15</b> Day 1	8	
<b>20</b> Day 4	<b>21</b> Day 3	<b>22</b> Day 2	<b>23</b> Day 1	24 Day 16 Last day to file	<b>25</b> Day 15	28	8	18 Hearing Date	19	20	21	22	23	
8	28 Holiday	<b>29</b> Day 14	<b>30</b> Day 13	<b>31</b> Day 12			24	25	26	27	28	29	30	

Make a note on your calendar to file the motion by this date. Do not miss this deadline. The court will cancel the hearing and you will have to start over.

#### Determine the legal deadline to serve the motion on the other parties or their attorneys

You must have all other attorneys (or self-represented parties) served with a copy of the motion, then have the server fill out a Proof of Service which you file along with the motion. This means that someone over the age of 18 who is not a party in the case must either mail or personally deliver a copy of the motion and related documents to them. There is a strict deadline to do this (earlier is always fine).

Personal service: 16 **court** days before the hearing, the same as the minimum filing deadline. The server can fill out Proof of Personal Service—Civil (POS-020 (https://www.courts.ca.gov/documents/pos020.pdf)).

Service by mail: 16 court days before hearing PLUS five calendar days before the hearing (more if the mailing address is outside California). (CCP § 1005

(http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CCP&sectionNum=1005.) ). The server can fill out Proof of Service by First-Class Mail—Civil. (https://www.courts.ca.gov/documents/pos030.pdf)

"Calendar days" include weekends and holidays, but if the final day lands on a weekend or holiday, it is pushed back to the previous court day.



Make a note on your calendar to have the motion served by mail before the deadline. If you miss the mail deadline, you can still have the motion served by personal service up until 16 court days before the hearing. If you miss that deadline, you will have to cancel your court date and start over.

### 3. Prepare the Motion

There is no pre-printed form for this motion. You will need to customize a motion on "pleading paper." Instructions and a sample motion are at the end of this guide.

You must file a separate motion for each of the discovery responses you wish to compel. For example, if you served both form interrogatories and requests for production, and got no answer to either, you will need to file two separate motions.

#### Parts of a Motion

A motion to compel responses to interrogatories or requests for production is made through a **motion**. A motion is a request to the judge to issue an order of some sort.

A written motion consists of four parts (the Notice of Motion and Motion are combined):

- Notice of Motion and Motion;
- Points and Authorities; and
- Declaration

The Notice of Motion lets the opposing party know when and where the motion is scheduled to be heard, while the Motion lets the court and the opposing party know what is being requested. The Points and Authorities explains to the court and the opposing party the legal basis of the motion, while the Declaration provides evidence, sworn under penalty of perjury (https://www.saclaw.org/glossary/perjury/), supporting the motion.

**Required elements of the Declaration:** In this case, the declaration must specifically state that the discovery documents were served, and the date of service, and attach a copy of the signed proof of service as an exhibit. In addition, the declaration must specifically describe meet and confer efforts, and attach related documents as exhibits.

In the sample and templates, the four parts listed above have been combined into a single document. Although it is possible to include a proposed formal order, the Sacramento County Superior Court typically issues minute orders in response to motions to compel discovery, and does not require a formal order to be submitted.



In Sacramento, the Notice of Motion and Motion **must** end with the paragraph from Local Rule 1.06 (A) (http://www.saccourt.ca.gov/local-rules/docs/chapter-01.pdf) informing the parties of the tentative ruling system. That language is included in the templates and the sample at the end of this Guide.

#### Modify the Template Motion

There is no Judicial Council form for this procedure. Instead, the relevant documents must be typed on 28-line pleading paper. A customizable template may be downloaded from these links:

- Notice of Motion and Motion to Compel **Responses to Interrogatories**; Points and Authorities; and Declaration (https://www.saclaw.org/wp-content/uploads/2023/04/sbs-motion-to-compel-discovery-responses-production.rtf), or
- Notice of Motion and Motion to Compel **Production of Documents**; Points and Authorities; and Declaration\_(https://www.saclaw.org/wp-content/uploads/2023/04/sbs-motion-to-compel-discovery-responses-production.rtf)

#### Select the proper template!

Although the language of the motion is the same in both templates, the supporting points and authorities are very different. Points and authorities explain to the court and the opposing party the legal basis of your motion. The court cannot grant your motion without the proper legal basis. Be sure to use the proper template (for compelling responses to either interrogatories or requests for production) for your best chance of having the court grant your motion. More information about how to fill the forms out is included on the sample at the end of this guide.

*Important:* Your Declaration must have a copy of signed Proof of Service showing the date and method by which the discovery was served attached as an Exhibit. You do not need to attach the requests themselves for a motion to compel response. (You would attach the requests and responses if you filed a motion to compel *further* responses, which is not covered here.) See Step 4, below, for information on how to prepare the Exhibit.

## **C**opy and Assemble Your Documents

Make four (4) copies of your Motion. One of these copies is to be served on the other party's attorney (or the other party, if they do not have an attorney); the original and the other three copies are to be filed with the court. Staple each of the copies, but leave the original unstapled so the court can scan it.

#### Attaching Exhibits

**Include Proof of Service:** All Motions to Compel Response must have at least two exhibits attached: 1. a copy of the signed Proof of Service demonstrating the date and method the discovery request was served on the responding party and 2. A copy of your meet & confer correspondence. You may need additional exhibits depending on your situation.

For each exhibit attached to your motion, you must place a page in front of the exhibit identifying it as Exhibit A, B, and so forth in alphabetical order.



## 5. Have the Motion Served and Attach the Proof of Service to Remaining Copies

Your motion must be served by a person over the age of 18 who is not a party to the case. Your server must complete a proof of service form, either <u>Proof of Service by First Class Mail (POS-030)</u> (http://www.courts.ca.gov/documents/pos030.pdf) or <u>Proof of Personal Service (POS-020)</u> (http://www.courts.ca.gov/documents/pos020.pdf). For more information on these Proofs of Service, see our guides for <u>Serving Documents by Mail</u> (https://www.saclaw.org/resource\_library/serving-documents-by-mail/) and <u>Service by Personal Delivery</u> (https://www.saclaw.org/resource\_library/personal-service/).

The proof of service form should be completely filled out, but not signed. Make a copy of the unsigned proof of service before proceeding and staple after the last page of the copy you will serve.

The server must then personally deliver or mail the service copy on the other party's attorney (or the other party, if they do not have an attorney).

The server then signs the Proof of Service form, and gives the signed Proof of Service to you.

Make copies of the signed proof of service. It is not necessary to copy the instruction page. Attach the signed original to the original motion packet, and the copies to the copy packets, after the last page.

## 6. File Your Motion in the Law and Motion Department

File the original (with original signed proof of service) and two copies (with copied proof of service) of your motion at the Law & Motion Civil Filing Window in Room 212 on the second floor of the Hall of Justice building, located at 813 6th Street in downtown Sacramento.

Filing Fee: There is a \$60 fee to file a motion.

**Fee Waiver:** If you are receiving government benefits such as Medi-Cal or are otherwise qualified because of low income, you can apply for a fee waiver. Turn the fee waiver request forms in with the motion instead of a fee payment. For more information, see our <u>Step-by-Step guide on Fee Waivers (https://www.saclaw.org/resource\_library/fee-waiver/)</u>.

# 7. Opposition Papers and Your Optional Reply Papers

If any opposing counsel or self-represented party opposes your motion, he or she may serve and file an opposition at least **nine court days** prior to your motion. No fee is required to file an opposition. The opposition contains a memorandum of points and authorities and usually a declaration, but does not need the notice of motion or motion. Be sure to check your mail, and read any documents you receive carefully.

If the other attorney or party opposes your motion, you may choose to serve and file a reply to the opposition



at least five court days prior to the motion. CCP § 1005

(http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=CCP&sectionNum=1005.). It must be served by overnight mail to reach the opposing party no more than one day after it is filed.

The reply is optional and is usually used to address new issues your opponent raised in the opposition. No fee is required to file a reply. See the our guide on <u>Writing, Scheduling, and Opposing Motions</u> (https://www.saclaw.org/resource\_library/motions-in-civil-cases/) for more information.

# 8. Review the Tentative Ruling and Notify Court and Opponent if You Wish to Appear

Pursuant to Local Rule 1.06 (http://www.saccourt.ca.gov/local-rules/docs/chapter-01.pdf), the judge will read your documents and will post a tentative ruling on the motion by 2:00 p.m. the court day **before the hearing**. (If you are not filing in Sacramento, check with your county court for their rules on tentative rulings. Most counties use a similar system.)

You may read the <u>tentative ruling online (https://www.saccourt.ca.gov/indexes/new-portal-info.aspx)</u> or call Department 53 (916-874-7858) or Department 54 (916-874-7848) to have a clerk read the ruling to you. For more information, see the <u>Tentative Ruling Information (https://www.saccourt.ca.gov/civil/self-help-services/tentative-ruling.aspx)</u> page on the Sacramento County Superior Court's website.

Closely review the tentative ruling. Since you are asking the court for to set aside the default, you are looking for your motion to be "GRANTED." If the court does not grant your request, your motion will be "DENIED." Even if your request is granted, be sure to read the tentative ruling very carefully, since it will likely contain other important information such as if and when you need to serve and file your proposed Answer (or other response).

**If you are happy with the tentative ruling**: you do not need to do anything. You won't have to go to court unless ordered to appear in the tentative ruling or unless the other side calls you and the court between 2:00 p.m. and 4:00 p.m. the court day before your hearing date to request an oral argument in front of the judge. If that happens, you should go to the court hearing and be prepared to argue why your motion should be granted.

**If you are not happy with the tentative ruling:** You can present arguments in front of the judge. To do so, call the Law and Motion Oral Argument Request Line at (916) 874-2615 by 4:00 p.m. the Court day before the hearing. You must also contact all opposing counsel and/or self-represented parties before 4:00 p.m. to let them know that you are requesting oral argument on the motion.

# 9. Attend the Hearing, if Necessary

If neither party calls the court and opposing party to request oral argument, the court will simply make the tentative ruling the order of the court.



If you or the other party request oral argument, you can attend in person or remotely by video or phone call using the Zoom app. The tentative ruling will explain how to connect if you choose to use Zoom.

Arrive or log onto Zoom early. There will probably be other cases scheduled at the same time. Go into the courtroom or Zoom waiting room and check in with the bailiff or clerk.

When your name is called, be ready to speak and to answer any questions the judge has. You will only have a few minutes. After both sides speak, the judge may make a decision right away, or may "take it under consideration" and mail out the decision in a few days.

# For Help

SH@LL (Self-Help at the Law Library) (https://saclaw.org/services/civil-self-help/)

609 9<sup>th</sup> Street, Sacramento CA 95814 (916) 476-2731 (Appointment Request Line)

Services Provided: SH@LL provides general information and basic assistance to self-represented litigants on a variety of legal issues. All assistance is provided by telephone. Visit <u>"What we can help with</u> (https://saclaw.org/services/civil-self-help/#canhelp)" for a list of qualifying cases.

*Eligibility:* Must be a Sacramento County resident or have a <u>qualifying case (https://saclaw.org/services/civil-self-help/#who)</u> in the Sacramento County Superior Court.

# **For More Information**

At the Law Library:

- California Civil Discovery Practice KFC 1020 .C35 Chap. 15 Electronic Access: On the Law Library's computers, using *OnLaw*.
- California Civil Practice: Procedure KFC 995 .A65 B3 Chap. 13
- California Deposition and Discovery Practice KFC1020 .D44 Chaps. 60 and 61 Electronic Access: On the Law Library's computers, using *Lexis Advance*.
- California Forms of Pleading and Practice KFC 1010 .A65 C3 (Ready Reference) Chaps. 194 and 195

Electronic Access: On the Law Library's computers, using *Lexis Advance*.

- California Points and Authorities KFC 1010 .B4 (Ready Reference) Chaps. 84 and 85 Electronic Access: On the Law Library's computers, using *Lexis Advance*.
- California Practice Guide: Civil Procedure Before Trial KFC 995 .W45 Chap. 8
- Handling Motions to Compel and Other Discovery Motions KFC 1020 .M37 Electronic Access: On the Law Library's computers, using *OnLaw*.
- Younger on California Motions KFC 1012. C35 Chap. 29



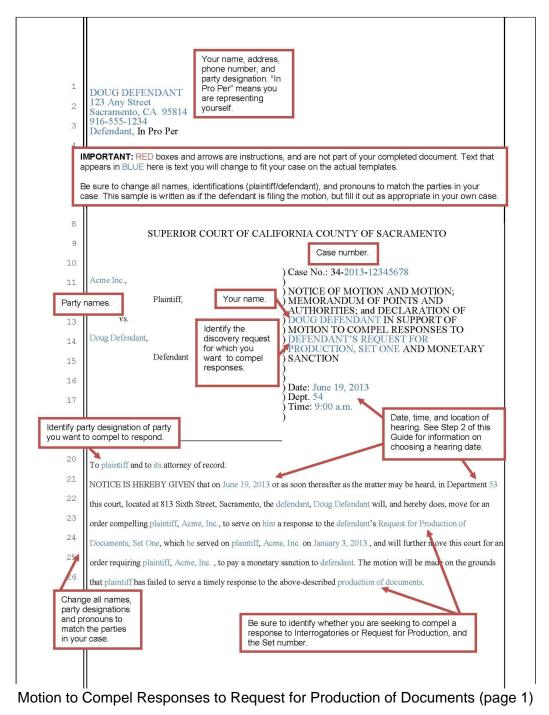
# Samples

## Meet-and-Confer Letter

	Sample "Meet and Confer" Letter
1	Andy Attorney, Esq. 1234 Main Street Sacramento, CA 95814
F	February 14, 2013
F	Re: Acme, Inc., v. Doug Defendant, Case # 34-2013-12345678
C	Dear Mr. Attorney:
w 4	am the defendant in the above-referenced case. Your client, Acme, Inc., vas served with my Request for Production, Set One, on January 3, 2013, l2 days ago. To date, you have not responded to the Request for Production.
C n	This letter asks you to please respond to the Request for Production, Set One by March 1, 2013. If I do not receive these responses, I will file a notion in court to obtain compliance and sanctions as provided by California Code of Civil Procedure § 2031.300.
Y	Yours truly,
Ľ	Dong Defendant
۵	Doug Defendant
	Meet and Confirm Letter



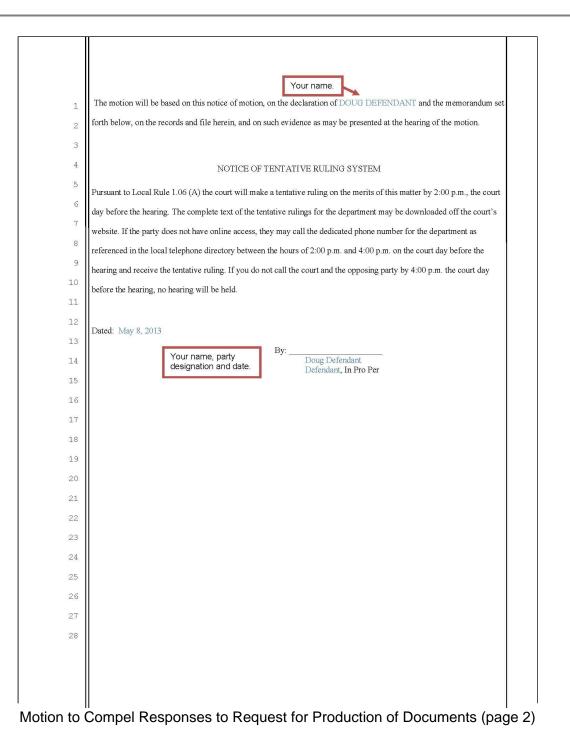
## Motion to Compel Responses to Request for Production





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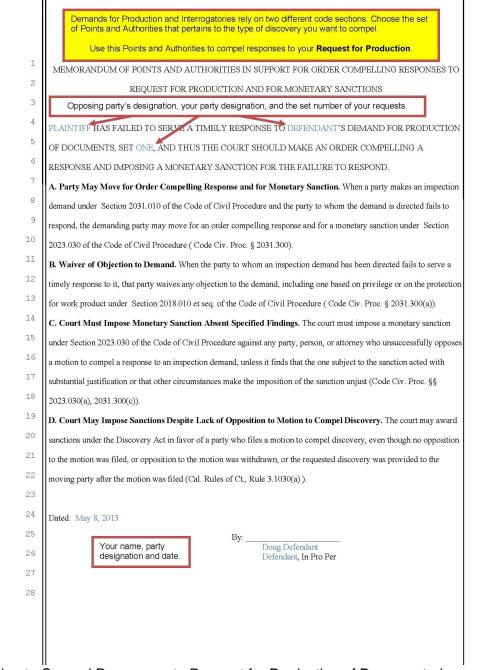
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Motion to Compel Responses to Request for Production of Documents (page 3)



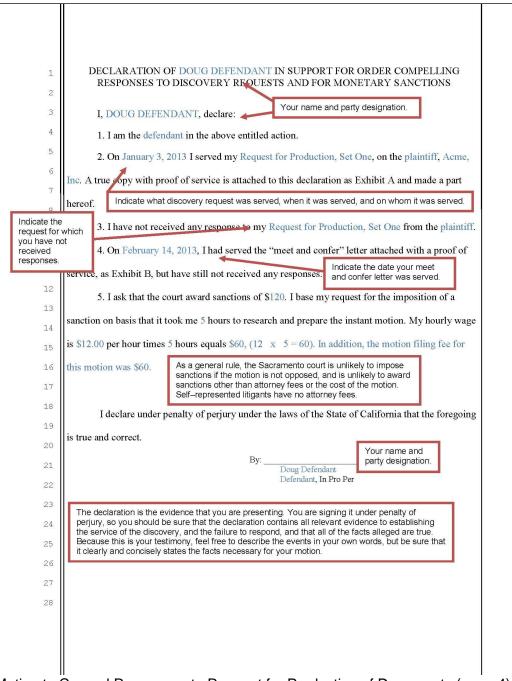
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1	Use this Points and Authorities to compel responses to Form or Special Interrogatories.
2	Opposing party's
	the Discovery Requests for which party designation.
ou wa	INT TO COMPET RESPONSES.
5	OF FORM INTERROGATORIES-GENERAL, BECAUSE THE PLAINTIFF HAS FAILED TO SERVE A TIMELY
6	RESPONSE. IF THE MOTION IS GRANTED, THE COURT SHOULD ALSO IMPOSE A MONETARY SANCTION
7	AGAINST PLAINTIFF BECAUSE THERE IS NO SHOWING THAT IT ACTED WITH SUBSTANTIAL
8	JUSTIFICATION OR THAT OTHER CIRCUMSTANCES MAKE THE IMPOSITION OF THE SANCTION UNJUS'
9	A. Statutory Authority. If a party to whom interrogatories have been directed fails to serve a timely response, the party
10	propounding the interrogatories may move for an order compelling response (Code Civ. Proc. § 2030.290).
11	B. Burden of Justification on Nonresponding Party. The service and filing of interrogatories pursuant to Section
12	2030.010 et seq. of the Code of Civil Procedure places the burden on the interrogated party to respond by answer, the
13	production of writings, or objection. The obligation of response must be satisfied unless excused by a protective order
14	obtained on a factual showing of good cause why no response should be given (Coriell v. Superior Court (1974) 39 Cal.
15	App. 3d 487, 492, 114 Cal. Rptr. 310).
16	C. Court Must Impose Monetary Sanction Absent Specified Findings. The court must impose a monetary sanction
17	under Section 2023.030(a) of the Code of Civil Procedure against any party, person, or attorney who unsuccessfully
18	opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with
19	substantial justification or that other circumstances make the imposition of the sanction unjust (Code Civ. Proc. §§
20	2023.030(a), 2030.290(c)).
21	D. Court May Impose Sanctions Despite Lack of Opposition to Motion to Compel Discovery. The court may award
22	sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition
23	to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the
24	moving party after the motion was filed (Cal. Rules of Ct., Rule 3.1030(a)).
25 26	Dated: May 8, 2013
20	Your name, party By:
	designation and date. Doug Defendant Defendant, In Pro Per
28	



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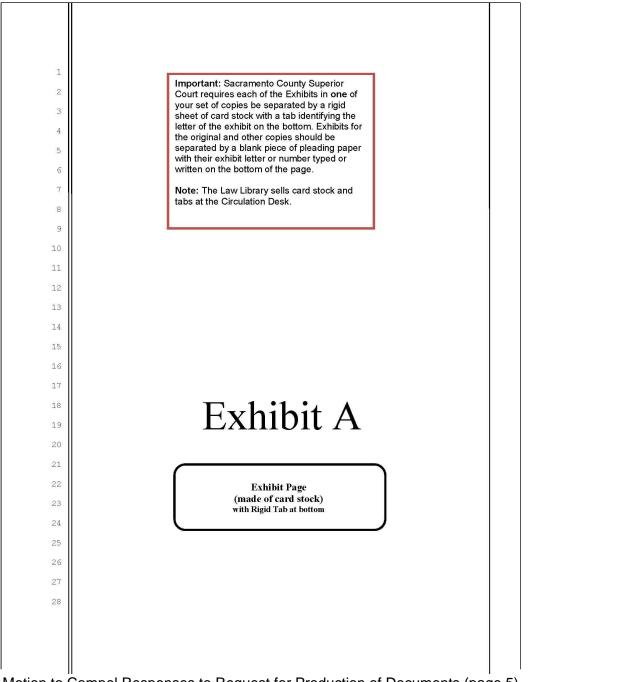


Motion to Compel Responses to Request for Production of Documents (page 4)



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Motion to Compel Responses to Request for Production of Documents (page 5) Attach a copy of your original discovery request here. Be sure to include the proof of service showing the date it was served on the other party.