

RESPONDING TO A MOTION TO DISMISS THE COMPLAINT

★ HOW TO GET LEGAL INFORMATION & 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.

APPOINTMENTS – Based on the Courthouse where your Judges is Assigned

- ✿ SAN FRANCISCO, OAKLAND, OR EUREKA-MCKINLEYVILLE
Federal Pro Bono Project | fedpro@sfbbar.org | (415) 782-8982
NOTE: Contact for scheduling only – no legal advice is given when scheduling.
- ✿ SAN JOSE
Federal Pro Se Program | (408) 297-1480
Drop-in hours Tuesday and Thursday from 9:00 a.m. to 4:00 p.m.
280 South 1st Street, 2nd Floor, Room 2070, San Jose

★ UNDERSTANDING LAWS & RULES

The Legal Help Centers (see above) 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: https://www.cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf
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: <https://www.cand.uscourts.gov/pro-se-litigants/legal-help-center-templates-packets/>
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: <https://www.uscourts.gov/sites/default/files/rules-of-civil-procedure.pdf>
4. **Civil Local Rules** – The Civil 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: <https://www.cand.uscourts.gov/rules/civil-local-rules/>

★ WHEN TO RESPOND TO A MOTION TO DISMISS

You have only 14 days to respond to a Motion to Dismiss. 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 to Dismiss papers.

★ DECIDE HOW TO RESPOND TO THE MOTION TO DISMISS

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 for advice. The deadline for filing an Amended Complaint is the same as the deadline for filing an Opposition.

★ HOW TO COMPLETE THE OPPOSITION TO MOTION TO DISMISS TEMPLATE

1. **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 to Dismiss.
2. **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.
3. **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).
4. **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:
<https://www.cand.uscourts.gov/>
5. **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 number of pages) on each page. Sign and date.
6. **Prepare the Certificate of Service** – Each document that you file must be “served” on each party, usually by sending it in the mail. A Certificate of Service lets the Court know that you served a certain document. To prepare the Certificate, follow the instructions on it. If all parties (including you) are registered ECF filers, you do not need to prepare or file a Certificate of Service.
7. **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 & SERVING YOUR OPPOSITION PAPERS

1. **Copies** – Once you have completed and signed your Opposition and Certificate (if needed), make three copies of each document. 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 additional copy for each of them.) ECF users do not need to include a chambers copy. See Civil Local Rule 5-1(d)(7).
2. **Serve the Opposition** – Be sure that the Opposition and Certificate are served on each other party. If you are filing electronically, your document is deemed served when filed.

See Civil Local Rule 5-1(h)(1).

3. **File the Opposition** – Deliver or mail the original plus two copies of the Opposition and Certificate to the Clerk’s Office at the courthouse where the Judge hearing your case is located. The Clerk will take the original and the copy marked “Chambers” of each document. The other copy is for you to keep after it is stamped by the Clerk.
 - a. **File by mail** – Include a self-addressed, stamped envelope so that the Clerk can send a copy of each document back to you.
 - b. **File electronically** – Follow the instructions for electronic filing, which can be found here: <https://www.cand.uscourts.gov/cases-e-filing/cm-ecf/> . The registration information to become an e-filer can be found here: <https://www.cand.uscourts.gov/cases-e-filing/cm-ecf/setting-up-my-account/e-filing-self-registration-instructions-for-pro-se-litigants/> .

★ TIMELINE: AFTER OPPOSITION PAPERS ARE FILED

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



*This typically occurs with a few weeks of the hearing date.

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Your Name: _____
Address: _____
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Fax Number: _____
E-mail Address: _____
Pro Se Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Division [check one]: San Francisco Oakland San Jose Eureka-McKinleyville

Plaintiff,

v.

Defendant.

Case Number _____
OPPOSITION TO MOTION TO DISMISS
Date: _____
Time: _____
Judge: Hon. _____

1 **ARGUMENT** – [Explain your response to each of Defendant’s arguments. Go in the same order
2 as the arguments were made in Defendant’s Motion, if possible.]

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1 [Insert this page as needed to continue the facts or argument section, or to write an introduction.]

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CERTIFICATE OF SERVICE

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

1. **Case name:** _____ v. _____

2. **Case number:** _____

3. **What documents were served?** Initial Disclosures

4. **How were the documents served?** Check one

Placed in U.S. Mail

Hand-delivered

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

Sent via email (if the other party has agreed to accept serve by email)

5. **Who did you send the documents 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, emails, 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: _____
