

Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:2

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:2] Motion for Summary Judgment or in the Alternative
for Summary Adjudication

Civ. Pro. Before Trial:	Ch. 10 ¶10:54 ff.—Procedural Requirements—Moving Party ¶10:84 ff.—Notice of Motion ¶10:44.30 ff.—Legal Issue or Claim for Damages
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[Name; state bar number]

[Firm name]

[Firm address]

[City; state; ZIP code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____	)	CASE NO. _____
)	
	)	NOTICE OF MOTION AND
Plaintiff(s),	)	MOTION FOR SUMMARY
	)	JUDGMENT OR IN THE
	)	ALTERNATIVE FOR
	)	SUMMARY
vs.	)	ADJUDICATION
)	
_____	)	Hearing Date/Time: _____
	)	Dept. No. _____
Defendant(s).	)	Hearing Judge: _____ [if known]
	)	Date action filed: _____
	)	Trial date: _____ [if set]

TO EACH PARTY AND TO COUNSEL OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on [date] at [time], in Department [number] of this Court, located at [address], [plaintiff(s)/defendant(s)] [name(s)] will move the Court, pursuant to Code of Civil Procedure section 437c, for summary judgment in favor of [plaintiff(s)/defendant(s)] [names] and against [plaintiff(s)/defendant(s)] [names], and for costs of suit incurred herein and such other relief as may be just. This motion is made on the ground that [state basis in detail, e.g., the undisputed facts establish that no enforceable contract was ever created, and that defendant did not make any defamatory statements.]

In the alternative, [plaintiff(s)/defendant(s)] [name(s)] will move the Court for an order adjudicating [specify each cause of action, affirmative defense, claim for damages or issue of duty, e.g., (a) that defendant is entitled to judgment on the first cause of action for breach of contract because no contract was formed; and (b) that defendant's affirmative defense of truth defeats plaintiff's second cause of action for defamation as a matter of law]. [Plaintiff(s)/Defendant(s)] [name] therefore seek(s) an order that the final judgment in this action shall, in addition to any matters determined at trial, award judgment as established by such adjudication.

The motion will be based on this notice, the attached memorandum in support, the separate statement of undisputed material facts, the declarations of [names] filed with this motion, the files and records in this action, and any further evidence or argument that the Court may properly receive at or before the hearing.

Date: _____

[Firm name]

By

[Attorney name]

Attorneys for

Prepare and file with **MOTION** or separately **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE FOR SUMMARY ADJUDICATION**

Civ. Pro. Before Trial:

Ch. 10 ¶10:102 ff.—Points and Authorities (Summary Judgment)

Ch. 9(I) ¶9:64 ff.—Points and Authorities (Generally)

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:1.3

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:1.3] Motion for Summary Judgment of [Issue] [Claim for Damages]

Civ. Pro. Before Trial: Ch. 10 ¶10:44.25 ff.—Legal Issue for Claims for Damages
¶10:44.29—Special Contents of § 437c(t) Notice of Motion
Ch. 9(I) ¶9:19 ff.; 9:28 ff.—Form/Contents of Motions

[Name; state bar number]

[Firm name]

[Firm address]

[City; State; Zip Code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____)	
	)	CASE NO. _____
)	
	)	NOTICE OF MOTION AND
Plaintiff(s),	)	MOTION FOR
	)	ADJUDICATION
vs.	)	OF [ISSUE] [CLAIM FOR
	)	DAMAGES]; MEMORANDUM
_____	)	IN SUPPORT;
	)	DECLARATION OF
Defendant(s)	)	[NAME]
	)	Hearing date/time: _____
	)	Dept. No. _____
	)	Judge: _____ [if known]
	)	Date action filed: _____
	)	Hearing date: _____

TO EACH PARTY AND TO COUNSEL OF RECORD FOR EACH PARTY:

YOU ARE HEREBY NOTIFIED THAT on [date] at [time], in Department [number] of this Court located at [address], [party/name] will move the Court for summary adjudication of the following [issue] [claim of damages]: [succinctly state the issue to be adjudicated, e.g., whether [party] is obligated to indemnify [other party] under the terms of the contract in dispute.]

This motion is made pursuant to the provisions of Code of Civil Procedure § 437c subd. (t). The parties to this motion stipulate that the court shall hear this motion and that the resolution of this motion will further the interest of judicial economy by decreasing trial time or significantly increasing the likelihood of settlement.

This motion is made on the ground that [state basis for motion e.g., the undisputed facts establish that [party] is obligated to indemnify [other party] under the terms of the contract in dispute.]

The motion will be based upon this notice, the [attached] memorandum in support, the separate statement of undisputed material facts, the declaration[s] of [name(s)], the records and files in this action and any further evidence and argument that the Court may receive at or before the hearing.

Date: _____

[Firm name]

By _____

[Attorney name]

Attorneys for [moving party]

Date: _____

[Firm name]

By _____

[Attorney name]

Attorneys for [opposing party]

NOTE: If a party to the motion is a self-represented litigant, that party must also sign the Notice of Motion

Prepare and attach (or file) MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF [ISSUE] [CLAIM FOR DAMAGES]

Civ. Pro. Before Trial: Ch. 9(I) ¶9:64—Points and Authorities

If appropriate, prepare and attach (or file) DECLARATION OF [NAME] IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF [ISSUE] [CLAIM FOR DAMAGES]

Civ. Pro. Before Trial: Ch. 9(I) ¶9:46 ff.—Declarations and Affidavits

Prepare and file [PROPOSED] ORDER GRANTING SUMMARY ADJUDICATION

Civ. Pro. Before Trial: Ch. 10 ¶10:346 ff.—Order Granting Summary Adjudication (See also Form 10:7)

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:2.1

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:2.1] Separate Statement of Undisputed Facts
in Support of Motion for Summary Judgment
or Summary Adjudication

Civ. Pro. Before Trial: Ch. 10 ¶10:94 ff.—Separate Statement on Summary Judgment
¶10:96.5 ff.—Separate Statement on Summary Adjudication

[Name; state bar number]

[Firm name]

[Firm address]

[City; state; ZIP code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____ ,	)	CASE NO. _____
)	
	)	SEPARATE STATEMENT OF
	)	UNDISPUTED MATERIAL
	)	FACTS
Plaintiff(s),	)	IN SUPPORT OF [MOVING
	)	PARTY'S] MOTION FOR
	)	SUMMARY JUDGMENT OR IN
vs.	)	THE ALTERNATIVE FOR
	)	SUMMARY ADJUDICATION
)	
_____ ,	)	Hearing Date/Time: _____
	)	Dept. No. _____
Defendant(s).	)	Hearing Judge: _____ [if known]
	)	Date action filed:
	)	Trial date: _____ [if set]

[Plaintiff(s)/Defendant(s)] [name(s)] submit(s) this separate statement of undisputed material facts, together with references to supporting evidence, in support of [his/her/their] Motion for Summary Judgment or In the Alternative for Summary Adjudication against [plaintiff(s)/defendant(s)] [names].

**MOVING PARTY'S UNDISPUTED
MATERIAL FACTS AND
SUPPORTING EVIDENCE**

**OPPOSING PARTY'S
RESPONSE AND
SUPPORTING EVIDENCE**

If the motion includes summary adjudication, identify issue for adjudication, e.g., **ISSUE NO. 1: DEFENDANT IS ENTITLED TO JUDGMENT ON THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT BECAUSE NO CONTRACT WAS FORMED.**

[State first material fact, e.g.,

1. In April 2005, plaintiff Perkins and defendant Dawson were long time personal friends.]

[Cite to admissible supporting evidence, e.g., Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 5:12:24.]

[State second material fact, e.g.,

2. On April 15, 2005, Perkins asked Dawson to build a vacation cottage according to certain plans to be provided by Perkins, for the sum of \$295,000. Dawson agreed to look at the plans.]

[Cite to admissible supporting evidence, e.g., Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 6:24-7-10; Dawson Declaration at 2:4-8.]

[State third material fact, e.g.,

3. After examining Perkins' plans and obtaining estimates for the cost of materials, Dawson told Perkins on April 25, 2005 that he could not build the cottage for less than \$330,000 and that it might cost more.]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 2:9-23 Perkins' Response to Interrogatory No. 4.]

[State fourth material fact, e.g.,

4. On May 1, 2005, Perkins told Dawson to go ahead with the project "at the price we discussed." Perkins was intentionally vague so he could later claim Dawson overcharged him.]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 2:24-3:5; Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 15:2-29.]

[State fifth material fact, e.g.,

5. In December 2005, after Dawson had completed the framing for the cottage and had received \$140,000 in progress payments, Dawson told Perkins that, due to unexpected site problems and higher materials costs, he would not be able to complete the cottage for less than \$350,000.]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 3:7-27; Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 21:7-22:16.]

[State sixth material fact, e.g.,

6. Perkins refused to pay any amount over \$295,000, stating that they "had a deal for \$295,000."]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 4:10-5:19; Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 23:4-25:17.]

[State seventh material fact, e.g.,

7. Dawson did no further work on the house after December 17, 2005.]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 5:20-22.]

If the motion includes summary adjudication, identify second issue for adjudication, e.g., **ISSUE No. 2: DEFENDANT'S AFFIRMATIVE DEFENSE OF TRUTH DEFEATS PLAINTIFF'S SECOND CAUSE OF ACTION FOR DEFAMATION AS A MATTER OF LAW.**

[State first material fact, e.g.,

1. Perkins claims that Dawson defamed him when, on February 5, 2006, in the presence of Johnson, a county building inspector, defendant Dawson described Perkins as "someone not to be trusted" because he had "a criminal record."]

[Cite to admissible supporting evidence, e.g., **First Amended Complaint dated December 1, 2006, Second Cause of Action, at 8:12-19, contained in the Court's file (courtesy copy attached as Ex. 2 to [attorney name] Declaration; Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 35:4-26.]**

[State second material fact, e.g.,

2. Dawson's statement was true. In 1996, Perkins was convicted of a violation of Health and Safety Code § 10980 (collecting welfare payments fraudulently).]

[Cite to admissible supporting evidence, e.g., **Request for Judicial Notice, Ex. A, certified copy of judgment, dated May 13, 1996.]**

[Continue with additional adjudication issues, facts, and supporting evidence, as needed.]

Date: _____

[Firm name]

By

[Attorney name]

Attorneys for

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:2.2

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:2.2] Declaration in Support of Motion for
Summary Judgment or in the Alternative
Summary Adjudication

Civ. Pro. Before Trial: Ch. 10 ¶10:107 ff.—Declarations—Form and Content Requirements

[Name; state bar number]

[Firm name]

[Firm address]

[City; state; ZIP code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____ ,	)	CASE NO. _____
)	
Plaintiff(s),	)	DECLARATION OF [NAME] IN
	)	SUPPORT OF MOTION FOR
	)	SUMMARY JUDGMENT OR IN
vs.	)	THE ALTERNATIVE FOR
	)	SUMMARY ADJUDICATION
)	
_____ ,	)	Hearing Date/Time: _____
	)	Dept. No. _____
Defendant(s).	)	Hearing Judge: _____ [if known]
	)	Date Action filed: _____
	)	Trial Date: _____ [if set]

I, [name of declarant], declare:

¶ __. [State capacity of declarant, e.g., I am one of the attorneys for defendants in this action. Add recital indicating personal knowledge, e.g., [and] I have personal knowledge of each fact stated in this declaration.]

[Describe each item of evidence relied upon from the discovery record, and set forth basis for authentication, e.g.,

¶ __. Attached as Exhibit __ are excerpts from the certified transcript of the deposition of [name].

¶ __. Attached as Exhibit __ is a true and correct copy of the construction documents provided to me in a verified response to an inspection demand served on [name].]

¶ __. [Continue to describe and authenticate excerpts of discovery record, as needed.]

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

[Name of Declarant]

Note: If evidence supporting or opposing the motion exceeds 25 pages, it must be in a separately bound court document with a table of contents. Cal. Rules of Court, Rule 3.1350(g). If such a document is submitted, citations to evidence would be to that document, e.g.:

[¶]__. [Excerpts from the deposition transcript of [name] are attached as Tab A to Defendant's Evidence in Support of Motion for Summary Judgment or In the Alternative Summary Adjudication, filed herewith. I attended the deposition, which was taken on [date], and can state that the transcript accurately reflects the testimony given.]

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:5

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:5] Separate Statement of Undisputed and Disputed
Material Facts in Opposition to Motion for
Summary Judgment or Summary Adjudication

Civ. Pro. Before Trial: Ch. 10 ¶10:188 ff.—Opposing Party's Separate Statement

[Name; State Bar Number]
[Firm Name]
[Firm Address]
[City; State; ZIP Code]
[Telephone number/Fax number]
[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____ ,	)	CASE NO. _____
)	
	)	<i>[PARTY/NAME]'S SEPARATE</i>
	)	STATEMENT OF
	)	UNDISPUTED
Plaintiff(s),	)	MATERIAL FACTS IN
	)	OPPOSITION TO <i>[MOVING</i>
	)	<i>PARTY]'S MOTION FOR</i>
vs.	)	SUMMARY JUDGMENT OR IN
	)	THE ALTERNATIVE FOR
	)	SUMMARY ADJUDICATION
)	
_____ ,	)	Hearing Date/Time: _____
	)	Dept. No. _____
Defendant(s).	)	Hearing Judge: _____ <i>[if known]</i>
	)	Date action filed: _____
	)	Trial date: _____ <i>[if set]</i>

[Plaintiff(s)/Defendant(s)] *[name(s)]* submit(s) this separate statement of disputed and undisputed material facts, together with references to supporting evidence, in response to [plaintiff(s)/defendant(s)] *[name(s)]* Separate Statement of Undisputed Material Facts and Supporting Evidence in Support of Motion for Summary Judgment or In the Alternative for Summary Adjudication.

MOVING PARTY'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	OPPOSING PARTY'S RESPONSE AND SUPPORTING EVIDENCE
---	--

If responding to motion for summary adjudication, identify issue for adjudication to which facts relate, e.g., **ISSUE No. 1: DEFENDANT IS ENTITLED TO JUDGMENT ON THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT BECAUSE NO CONTRACT WAS FORMED.**

[Repeat moving party's first Undisputed Material Fact and supporting evidence, i.e.,

1. In April 2005, plaintiff Perkins and defendant Dawson were long time personal friends. Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 5:12:24.]

[State whether opposing party considers the fact disputed or undisputed and, if disputed, cite to supporting evidence, e.g.,

Undisputed.]

[Optional: State objections to moving party's evidence by reference to Objection Number of separately filed evidentiary objections.]

[Repeat moving party's second material fact and supporting evidence, i.e.,

2. On April 15, 2005, Perkins asked Dawson to build a vacation cottage according to certain plans to be provided by Perkins, for the sum of \$295,000. Dawson agreed to look at the plans. Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 6:24-7-10; Dawson Declaration at 2:4-8.]

[State whether opposing party considers the fact disputed or undisputed and, if disputed, cite to supporting evidence, e.g.,

Disputed. During the same conversation, Dawson looked at the plans and told Perkins that he had built a similar cottage for about \$350,000 but would agree to give Perkins a discount because he was his friend and he assumed Perkins would let him use it from time to time.]
[Cite to admissible supporting evidence, e.g., Perkins Deposition, Ex. 1 to [attorney name] Declaration, at 6:1-22.]

[Repeat moving party's third material fact and supporting evidence, i.e.,

3. After examining Perkins' plans and obtaining estimates for the cost of materials, Dawson told Perkins on April 25, 2005 that he could not build the cottage for less than \$330,000 and that it might cost more. Dawson Declaration at 2:9-2 Perkins' Response to Interrogatory No. 4.]

[State whether opposing party considers the fact disputed or undisputed and, if disputed, cite to supporting evidence, e.g.,

Undisputed.]

[Repeat moving party's fourth material fact and supporting evidence, i.e.,

4. On May 1, 2005, Perkins told Dawson to go ahead with the project "at the price we discussed." Perkins was intentionally vague so he could later claim Dawson overcharged him.]

[Cite to admissible supporting evidence, e.g., Dawson Declaration at 2:24-3:5; Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 15:2-29.]

[State whether opposing party considers the fact disputed or undisputed and, if disputed, cite to supporting evidence, e.g.,

Disputed. Perkins sent Dawson an email stating that the price would be "what you [Dawson] told me."]
[Cite to admissible supporting evidence, e.g., Perkins Declaration, Ex. 4.]

[Optional: State objection to evidence by reference to Objection Number of separately filed evidentiary objections, e.g., Objection to Dawson Declaration at 2:24-3:5: Lack of personal knowledge. See Objection No. 1.]

[Continue with responses to each material fact presented by moving party.]

[Plaintiff(s)/Defendant(s)] *[name(s)]* also submit the following statement of additional material facts that raise a triable issue with respect to Issue No. 1, together with references to supporting evidence, in opposition to [plaintiff(s)/defendant(s)] *[name(s)]* motion.

OPPOSING PARTY'S ADDITIONAL MATERIAL DISPUTED FACTS AND SUPPORTING EVIDENCE

[State additional disputed facts, e.g.,

1. Contrary to Dawson's claims, the vacation cottage that is the subject of this dispute could be built for less than \$300,000.]

[Cite to admissible supporting evidence, e.g., [Expert's Name] Declaration 32:3-25.]

[Continue with additional material facts and supporting evidence as needed.]

If responding to motion for summary adjudication, identify second issues for adjudication to which facts relate, e.g.,
ISSUE No. 2: WHETHER DEFENDANT'S AFFIRMATIVE DEFENSE OF TRUTH DEFEATS PLAINTIFFS' SECOND CAUSE OF ACTION FOR DEFAMATION AS A MATTER OF LAW.

[Following the same format, continue with responses to each material fact presented by moving party and set forth any additional facts related to Issue No. 2.]

Date: _____

[Firm name]

By

[Attorney name]

Attorneys for

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:6

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:6] Objections to Evidence

Civ. Pro. Before Trial: Ch. 10 ¶10:210 ff.; ¶10:221 ff.—Objections to Evidence
Ch. 9(I) ¶9:1026—Evidentiary Objections

[Name; State Bar Number]

[Firm Name]

[Firm Address]

[City; State; ZIP Code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____	)	CASE NO. _____
)	
	)	[PARTY/NAME]'S
	)	OBJECTIONS TO
	)	EVIDENCE SUBMITTED BY
Plaintiff(s),	)	[PARTY/NAME] IN [SUPPORT
	)	OF] [OPPOSITION TO]
	)	MOTION FOR SUMMARY
	)	JUDGMENT OR
vs.	)	IN THE ALTERNATIVE FOR
	)	SUMMARY ADJUDICATION
)	
_____	)	Hearing Date/Time: _____
	)	Dept. No. _____
Defendant(s),	)	Hearing Judge: _____ [if known]
	)	Date action filed: _____
	)	Trial date: _____ [if set]

[Plaintiff(s)/Defendant(s)] [name(s)] submit(s) the following objections to evidence cited by [Plaintiff(s)/Defendant(s)] [name(s)] in support of [in opposition to] [moving party]'s Motion for Summary Judgment or In the Alternative for Summary Adjudication:

OBJECTION NO. 1

Material objected to: [State material objected to, e.g., "Perkins intended to keep the terms of the deal vague so that he could later claim that I charged him too much if he was unhappy with the result." (Dawson Declaration at 2:24-3:5)]

Ground(s) for Objection: [State ground for objection, e.g., Lack of personal knowledge (Evid. Code § 702(a)).]

OBJECTION NO. 2

[Continue with additional objections in the above format.]

Date: _____

[Firm name]

By

[Attorney name]

Attorneys for

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Perkins does not provide any testimony contradicting Dawson's statement that he later told Perkins the cottage could not be built for \$295,000. (Perkins Deposition at 6:24 - 7:10.) Perkins also does not provide any evidence that he stated any specific amount when he told Dawson to go ahead "at the price we discussed" (Perkins Deposition at 15:2-29.) The fact that Perkins presented evidence the cottage could have been built for less than \$300,000 ([Expert name] Declaration at 2:3-25) is not relevant to the question whether Perkins and Dawson formed a legally enforceable agreement. Etc.]

The Court makes the following *[or, if the parties' objection forms are used, the attached]* rulings on the respective parties' evidentiary objections: *[List (or refer to the attached forms containing) the rulings, e.g.,*

1. Plaintiff's objection to the Request for Judicial Notice on grounds of lack of authentication is overruled.
2. Plaintiff's objection to Dawson Declaration at 2:24-3:5 on grounds of lack of foundation is overruled.]

THEREFORE IT IS ORDERED that the motion for summary judgment *[or, for adjudication of the specified causes of action [or] issues]* is granted, and that judgment in favor of *[name]* and against *[name]* shall be entered accordingly *[or, shall be entered after trial of this action on the remaining causes of action.]* The parties will jointly submit a proposed form of judgment (or, if they cannot agree, separate proposed forms of judgment) within 5 court days of this Order.

Date: _____

Judge of the Superior Court

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Cal. Prac. Guide Civ. Pro. Before Trial Forms Form 10:8

California Practice Guide--Civil Procedure Before Trial - Forms
June 2016 Update

Justice Maria P. Rivera

Chapter 10. Summary Judgment

[Form 10:8] Proposed Order Denying Motion for Summary
Judgment (And/Or Summary Adjudication)

Civ. Pro. Before Trial: Ch. 10 ¶10:352 ff.—Order Denying Summary Judgment
¶10:366 ff.—Order Denying Summary Adjudication

[Name; state bar number]

[Firm name]

[Firm address]

[City; state; ZIP code]

[Telephone number/Fax number]

[E-mail address]

Attorneys for _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF _____

_____	)	CASE NO. _____
)	
	)	[PROPOSED] ORDER
	)	DENYING MOTION
Plaintiff(s),	)	FOR SUMMARY
vs.	)	JUDGMENT [AND]
	)	[SUMMARY ADJUDICATION]
_____)	
)	
Defendant(s).)	
)	

The motion by [plaintiff(s)/defendant(s)] [name(s)] for summary judgment or in the alternative for summary adjudication came on for hearing in Department [number] of this Court on [date]. [Name of counsel] appeared on behalf of defendant(s), [name(s)]. [Name of counsel] appeared on behalf of plaintiff(s) [name(s)].

After full consideration of the evidence, and the written and oral submissions by the parties, the Court finds that there are triable issues of material fact as set forth below and that the motion must be denied in its entirety for that reason. Such triable issues are: [State cause of action or state issue presented for summary adjudication, e.g.,

First Cause of Action-Breach of Contract

[or]

Issue No. 1: Whether Defendant is Entitled to Judgment on the First Cause of Action for Breach of Contract Because No Contract Was Formed]

Triable Issues of Material Fact

[Describe triable issue of fact, e.g.,

1. Whether defendant Perkins agreed to build the cottage at a discounted rate, in the amount of \$295,000.

2. Whether defendant Dawson understood the terms of the contract, but attempted unilaterally to alter them by making false claims about the cost of construction.]

Evidence Showing Dispute

[Cite evidence creating disputed issue, e.g.,

Perkins Deposition (Ex. 1 to [attorney name] Declaration), at 6:24-7:10; Dawson Declaration at 2:4-8; Perkins Declaration 3:5-22.

[Expert's Name] Declaration 32:3-25; Dawson Declaration at 3:7-27; Perkins Deposition at 21:7-22:16.]

[Continue as necessary with factual issues and conflicting evidence on contract claim. If appropriate, state next cause of action or issue presented for summary adjudication, e.g.,

Second Cause of Action-Defamation

[or]

Issue No. 2: Whether Defendant's Affirmative Defense of Truth Defeats the Defamation Cause of Action as a Matter of Law]

Triable Issues of Material Fact

[Continue as appropriate with factual issues and conflicting evidence on the next cause of action or issue for adjudication.]

Evidence Showing Dispute

The Court makes the following [or, if the parties' objections forms are used, the attached] rulings on the respective parties' evidentiary objections: [List (or refer to the attached forms containing) the rulings, e.g.,

1. Plaintiff's objection to the Request for Judicial Notice on the ground of lack of authentication is overruled.

2. Defendant's objections to [Expert Name]'s Declaration at 2:3-17, 3:5-24 and pages 4 and 5, on the ground of lack of foundation is overruled.]

THEREFORE IT IS ORDERED that the motion is DENIED.

Date: _____

Judge of the Superior Court

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