Rule 56 Precedent-Briefing Checklist

Mark each item only when the entry satisfies it in full, or N/A when the item cannot apply to the decision briefed. Items follow the order of the entry; the instruction opposite each item states the standard against which it is checked.

This form governs reference briefs of decisions construing or applying Fed. R. Civ. P. 56, written for use by either a movant or a nonmovant.

DATE OF REVIEW	CITATION	
COURT & DOCKET	REVIEWER	AUTHORITY WEIGHT IN FORUM
DATE DECIDED	REVIEWING CIRCUIT	PUBLICATION STATUS
RULE 56 VERSION AT DECISION	HISTORY VERIFIED THROUGH	COURTLISTENER CLUSTER ID

1 — OVERVIEW AND ORIENTATION

☐ 1.1 The Firm maintains a brief bank that preserves the firm's prior work analyzing cases for possible future use in preparing motions and briefs in federal courts. A high-quality brief allows a reader to come quickly up to baseline speed and provides the foundation for bringing research down to the current state of the law.

To do that, briefs must be written with a view to avoiding cognitive biases that can arise when a case is being read for a specific adversarial purpose.

☐ 1.2 Among the common cognitive biases:

- Confirmation bias: reading for the evidence that fits a conclusion already formed, such as the position a client would want
- Narrative coherence: preferring the account that makes a clean story over the one the record supports
- Overconfidence: giving a statement weight in proportion to the conviction with which it is expressed ("it is beyond doubt that … .")
- Availability: judging what is typical or likely by what comes to mind most readily

Analysis is **hard**, which is why we must be trained to it, beginning as 1Ls, and practice it throughout our careers.

- What you see is all there is: treating the material before you as complete and overlooking what is missing
- Cognitive ease: accepting a fluent, familiar answer without asking the question that would test it

☐ 1.3 Avoid reading a case with a view to how it could be used to support or undermine a motion for summary judgment by either party. The implication is that the brief is written without knowing in advance how the position of any particular client might cut. One pass will examine the case from that perspective, but it should not be the viewpoint from which the case is read initially.

> We should place ourselves behind the veil of ignorance, a concept from the work of the philosopher John Rawls: brief the case as though we do not yet know which side we will be on.

☐ 1.4
- Download the current Federal Rules of Civil Procedure from uscourts.gov. Amendments take effect December 1 of the year adopted; confirm the edition against the date of the decision being briefed.
- Review the Advisory Committee Notes, the 2010 Note to Rule 56 first: the 2010 amendment renumbered the rule's subdivisions, and every earlier decision cites the old ones (see the concordance in Section 8).
- Record in the header the version of the rule in force at the date of decision: before December 1, 2007; December 1, 2007 to November 30, 2010; or December 1, 2010 forward.

> Do not assume that there have been no amendments since the last time you read it. Rule 56 was last amended effective December 1, 2010. The 2010 Note states that the standard for granting summary judgment was unchanged, so earlier decisions on the standard remain good law even though their subdivision references do not.

☐ 1.5 Read the leading Supreme Court cases on summary judgment and note the propositions for which each can be cited.
- *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986) (a movant that does not bear the burden of persuasion at trial may discharge its initial burden by pointing to the absence of evidence on an essential element; summary judgment follows "after adequate time for discovery")
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–55 (1986) (materiality is defined by the substantive law and genuineness by whether a reasonable jury could find for the nonmovant; the substantive evidentiary standard of proof applies; credibility, weight, and legitimate inferences are for the jury)
- *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986) (the nonmovant must do more than show "some metaphysical doubt"; where

> Brief them if you haven't already, according to this checklist. Do -**not**- rely on memory. Memory is selective and unreliable. Quotations in an entry are verified against the opinion text, never reconstructed.

the record taken as a whole could not lead a rational trier of fact to find for the nonmovant, there is no genuine issue for trial)
- *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 468 (1992) (*Matsushita* "demands only that the nonmoving party's inferences be reasonable in order to reach the jury")
- *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (each element of standing must be supported "with the manner and degree of evidence required at the successive stages of the litigation"; at summary judgment, by specific facts set forth by affidavit or other evidence)
- *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000) (the Rule 50 standard mirrors Rule 56; the court draws all reasonable inferences for the nonmovant and may not make credibility determinations or weigh the evidence)
- *Scott v. Harris*, 550 U.S. 372, 380 (2007) (a version of the facts "blatantly contradicted by the record, so that no reasonable jury could believe it," need not be credited)
- *Ortiz v. Jordan*, 562 U.S. 180 (2011) (an order denying summary judgment is not reviewable on appeal after a full trial on the merits)
- *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (per curiam) (summary reversal of a grant that failed to view the evidence in the light most favorable to the nonmovant)
- *Dupree v. Younger*, 598 U.S. 729 (2023) (a purely legal issue resolved at summary judgment is preserved for appeal without a Rule 50 motion)

☐ 1.6 Read the Ninth Circuit decisions that govern how the standard is applied in the courts whose decisions the bank principally collects, and note the propositions for which each can be cited.

> Every district court decision in the bank is stamped with the circuit that reviews it; these are the cases that circuit will apply.

- *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000) (a movant without the trial burden may carry its initial burden either by negating an element or by showing the nonmovant lacks evidence; the nonmovant's responsive burden depends on which route was taken)
- *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (a movant that bears the burden of proof at trial must produce evidence that would entitle it to a directed verdict if uncontroverted)

- *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134–36 (9th Cir. 2001) (cross motions are evaluated separately, each on the evidence submitted in support of and in opposition to both)
- *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003) (evidence may be considered at summary judgment if its contents could be presented in admissible form at trial)
- *Sandoval v. County of San Diego*, 985 F.3d 657, 666 (9th Cir. 2021) (under Rule 56(c)(2) as amended, objections to the form of evidence are misplaced; the question is whether the content is admissible)
- *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998–99 (9th Cir. 2009) (sham-affidavit rule: a declaration contradicting prior deposition testimony may be disregarded, but only on a finding that the contradiction is a sham, and not for minor inconsistencies or clarifications)
- *Heinemann v. Satterberg*, 731 F.3d 914, 916–17 (9th Cir. 2013) (Rule 56(e) does not permit summary judgment by default; a local rule to the contrary yields to the federal rule)

2 — SHORT SUMMARY

☐ 2.1 Briefly describe what the case is about.

> *e.g.,* This is a putative class action alleging violations of the Fair Credit Reporting Act.

☐ 2.2 Classify the motion by moving party and scope. Record the analytic posture separately under 3.1 and 3.2; a motion commonly falls under more than one heading there.

- Plaintiff motion for full summary judgment
- Defendant motion for full summary judgment
- Plaintiff motion for partial summary judgment

> The scope recorded here (full or partial) should match the disposition recorded at 10.1.

- Defendant motion for partial summary judgment
- Cross motions for summary judgment
- Motion by a counterclaimant, cross-claimant, or third-party defendant (record the party's role)

3 — POSTURE

Apply the following typology. Headings are not mutually exclusive: record every one that applies. Items 3.3 through 3.12 apply to appellate decisions; mark them N/A for a district court entry.

☐ 3.1 Trial-court posture: burden and scope.

- Defensive summary judgment: the movant (usually the defendant) does not bear the burden of persuasion at trial. It may carry its initial burden either by pointing out the absence of evidence on an essential element of the nonmovant's claim or by producing evidence that negates the element. Record which route the court found the movant took, because the nonmovant's responsive burden differs.
- Offensive summary judgment: the movant (usually a plaintiff, or a defendant asserting an affirmative defense) bears the burden of persuasion at trial and must establish every element of the claim or defense so that no reasonable jury could find for the nonmovant.
- Complete summary judgment: the motion seeks to resolve all claims for all parties; the judgment is final on entry under Rule 58.
- Partial summary judgment (Rule 56(a)): the motion targets a claim or defense, or a part of one, leaving the rest for trial. A common example is judgment on liability with damages reserved for the jury. Note any facts treated as established under Rule 56(g).
- Cross motions for summary judgment: the court evaluates each motion independently, on the whole record submitted for both; the motions need not be filed simultaneously.
  1. Closed universe (true stipulation): the parties stipulate to the facts and ask that the case be decided purely as a matter of law. Record whether they also agreed to submission on the stipulated record (Rule 52) or preserved the jury right.
  2. Asymmetric: the parties move on different elements or claims and the decision on one does not dictate the decision on the other.
  3. Dueling narratives: both sides claim material facts are undisputed in their favor, but the factual narratives are contradictory.

Trial-court postures (3.1 and 3.2). Record every heading that applies.

- *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)
- *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000) (the two routes and the nonmovant's responsive burden)
- *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (movant with the trial burden)
- *Fair Hous. Council of Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134–36 (9th Cir. 2001) (cross motions)

☐ 3.2 Trial-court posture: procedural configuration.

- Fully submitted: the evidentiary record is mature after adequate time for discovery (*Celotex*, 477 U.S. at 322); by default a motion may be filed at any time until 30 days after the close of all discovery (Rule 56(b)).
- Converted motion (Rule 12(d)): a Rule 12(b)(6) or 12(c) motion treated as one for summary judgment because matters outside the pleadings were presented and not excluded; record whether the parties had notice and a reasonable opportunity to present pertinent material.
- Judgment independent of the motion (Rule 56(f)): after notice and a reasonable time to respond, the court (1) grants summary judgment for a nonmovant, (2) grants the motion on grounds not raised by a party, or (3) considers summary judgment on its own after identifying material facts that may not be genuinely in dispute. Record which paragraph applied.
- Deferred (Rule 56(d)): the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition; the court may defer considering the motion or deny it, allow time for affidavits, declarations, or discovery, or issue any other appropriate order. Record which.
- Successive or renewed motion: a second motion after denial of the first, or a renewed motion after remand; the district court has discretion to entertain it.
- Paired with a Rule 702 (*Daubert*) motion: admissibility of expert evidence decided with, or as a predicate to, the motion.
- Class action: the motion was decided before or after class certification; note any one-way-intervention issue where a defendant moved before certification.
- On remand from an appellate court.
- Reconsideration: a motion to revise an interlocutory summary judgment order (Rule 54(b)), to alter or amend the judgment (Rule 59(e)), or for relief from judgment (Rule 60(b)).

> Rule 56(c) is "Procedures" (record citations, admissibility objections, uncited materials, affidavit requirements); it says nothing about the maturity of the record. The "adequate time for discovery" language is *Celotex*.
> - *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010) (successive motions are within the district court's discretion)
> - *Tatum v. City & County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) (a Rule 56(d) request must identify by affidavit the specific facts further discovery would reveal and explain why they would preclude summary judgment)
> - *Schwarzschild v. Tse*, 69 F.3d 293, 295–97 (9th Cir. 1995) (one-way intervention where a defendant moves for summary judgment before class certification)

☐ 3.3 Appeal of a complete grant as of right

> 28 U.S.C. § 1291. Requires entry of a final judgment (Rule 58), or a Rule 54(b) certification where fewer than all claims or parties were resolved. Reviewed *de novo*.

☐ 3.4 Interlocutory appeal of a partial grant

Rule 54(b) (express determination that there is no just reason for delay; the partial judgment is then final and appealable under § 1291) or 28 U.S.C. § 1292(b) (certified controlling question of law on which there is substantial ground for difference of opinion; petition to the court of appeals within ten days). Record which vehicle was used. Rule 56(b) governs only the time to file the motion.

☐ 3.5 Interlocutory appeal under the collateral order doctrine

- *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)
- *Mitchell v. Forsyth*, 472 U.S. 511 (1985) (denial of qualified immunity on a question of law is immediately appealable)
- *Johnson v. Jones*, 515 U.S. 304 (1995) (not where the denial rests on the sufficiency of the evidence)
- *Plumhoff v. Rickard*, 572 U.S. 765 (2014) (legal issues remain reviewable)
- *Behrens v. Pelletier*, 516 U.S. 299 (1996) (a second pretrial appeal after denial at summary judgment is permitted)

☐ 3.6 Appeal from a denial of summary judgment

Not appealable as of right, and not reviewable after a full trial on the merits; but a purely legal issue resolved at summary judgment is preserved for appeal without a Rule 50 motion. Record how the appellate court treated the denial.

- *Ortiz v. Jordan*, 562 U.S. 180 (2011)
- *Dupree v. Younger*, 598 U.S. 729 (2023)

☐ 3.7 Rehearing *en banc*: record whether the decision is a panel or *en banc* opinion, whether rehearing was sought and denied, and any dissent from denial of rehearing *en banc*.

A dissent from denial of rehearing *en banc* signals doctrinal instability and belongs in Section 15 as well. When rehearing *en banc* is granted, the Ninth Circuit's standard order provides that the panel opinion may not be cited as precedent.

☐ 3.8 Certiorari to clarify Rule 56

- *See, e.g.*, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)
- *see also* *Scott v. Harris*, 550 U.S. 372 (2007)
- *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam)

☐ 3.9 Certiorari to resolve a conflict among circuits

☐ 3.10 *Per curiam* summary reversal

Most common in qualified-immunity cases.
- *Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam) (grant of summary judgment reversed for failure to view the evidence in the light most favorable to the nonmovant)

☐ 3.11 Grant, vacate, and remand

The Court vacates in light of an intervening decision and remands for reconsideration without deciding the merits. Record the intervening decision; the decision on remand is the one to brief.
- *Lawrence v. Chater*, 516 U.S. 163 (1996)

☐ 3.12 Record the standard of review the appellate court applied to each ruling: *de novo* on the grant or denial of summary judgment; abuse of discretion on Rule 56(d) rulings, evidentiary rulings, and Rule 56(h) sanctions.

The standard governs how the holding transfers: an abuse-of-discretion affirmance establishes less than a *de novo* one.

4 — COURT AND DOCKET

☐ 4.1 For a district court decision
- judge
- docket number
- district and division
- whether the decision adopts a magistrate judge's report and recommendation (28 U.S.C. § 636(b)(1)) or was entered on consent (§ 636(c))
- date decided
- publication status (F. Supp. or database-only)
- the circuit that reviews the district

- *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (a district court decision is not binding precedent in a different district, the same district, or even on the same judge in a different case)

☐ 4.2 For a circuit court decision
- circuit
- the panel composition, or *en banc*
- author
- vote
- dissent, if any (author and scope)
- concurrence, if any (author and scope)
- date argued
- date filed
- date of any amended opinion
- precedential status (published opinion or unpublished memorandum disposition)

9th Cir. R. 36-3: unpublished dispositions are not precedent; those issued on or after January 1, 2007 may be cited (Fed. R. App. P. 32.1), earlier ones may not except in narrow circumstances. Where an amended opinion issued, cite the amended opinion.

☐ 4.3 For a Supreme Court decision
- author

- vote and lineup (majority, plurality, concurrence in the judgment)
- dissent, if any
- concurrence, if any
- date argued
- date filed
- *per curiam*, if so
- court of origin

5 — ELEMENTS

Identify the elements or defenses on which the motion turned. For each, record which party bears the burden of persuasion at trial, whether the movant proceeded by pointing to an absence of evidence or by negating the element, and whether the court decided the point as a matter of law on undisputed facts or by finding a genuine dispute absent or present.

☐ 5.1 Threshold issues

- Standing (injury in fact, traceability, redressability; in a class action for statutory damages, concrete injury for every class member who recovers)
- Subject-matter jurisdiction (*e.g.,* federal question; diversity of citizenship and amount in controversy; foreign sovereign immunity)
- Mootness and ripeness
- Sovereign and Eleventh Amendment immunity
- Exhaustion of administrative remedies
- Arbitration
- Class certification status, and whether the ruling binds absent class members
- Threshold issues intertwined with the merits

- *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 561 (1992) (in response to a summary judgment motion the plaintiff "must 'set forth' by affidavit or other evidence 'specific facts'" establishing each element of standing)
- *See* Spokeo, Inc. v. Robins, 578 U.S. 330 (2016) (injury in fact must be concrete as well as particularized; a bare procedural violation of the FCRA may not suffice)
- *See* TransUnion LLC v. Ramirez, 594 U.S. 413 (2021) (every class member must have Article III standing to recover individual damages)
- *See* Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998) (no "hypothetical jurisdiction"; jurisdiction is decided before the merits)
- *See* Arbaugh v. Y & H Corp., 546 U.S. 500 (2006) (a statutory threshold is an element of the claim, not a jurisdictional limit, unless Congress clearly states otherwise)
- *See* Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039–40 (9th Cir. 2004) (facial versus factual attacks under Rule 12(b)(1); where jurisdiction and the merits are intertwined, the summary judgment standard applies)
- *See* Leite v. Crane Co., 749 F.3d 1117, 1121–22 & n.3 (9th Cir. 2014) (same)
- *See* Albino v. Baca, 747 F.3d 1162, 1166, 1168–71 (9th Cir. 2014) (en banc) (exhaustion under the PLRA is decided on summary judgment under Rule 56 where the facts permit)
- *See* Schwarzschild v. Tse, 69 F.3d 293, 295–97 (9th Cir. 1995) (one-way intervention where a defendant moves before class certification)

☐ 5.2 *Prima facie* elements of the claim, as the court stated them (cite the source of the elements: statute, controlling case, or pattern instruction)
- Breach of duty or standard of care
- Causation in fact or proximate cause
- Contract formation and breach
- Statutory elements (*e.g.,* FCRA § 1681e(b) reasonable procedures; § 1681i reinvestigation; § 1681s-2(b) furnisher duties)
- Scienter (willfulness, knowledge, or intent), including the standard applied
- Damages as an element of the claim

> Questions of motive and intent are often, but not always, unsuited to summary judgment; record how the court treated them.
> - *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007) (willfulness under the FCRA includes reckless disregard)

☐ 5.3 Affirmative defenses
- Time-based (limitations and repose; accrual and discovery-rule facts; tolling)
- Preclusion (*res judicata*, collateral estoppel)
- Failure to mitigate
- Qualified immunity
- Preemption
- Release, waiver, estoppel, and consent
- Arbitration agreement
- Statutory safe harbors and immunities (*e.g.,* FCRA § 1681h(e))

> The party asserting the defense bears the burden of persuasion; a defendant moving on its own defense is in the offensive posture of 3.1.

☐ 5.4 Derivative and vicarious liability
- *Respondeat superior* (scope of employment)
- Independent contractor vs. employee
- Piercing the corporate veil/alter ego
- Successor liability

☐ 5.5 Damages and remedies
- Punitive damage thresholds
- Contractual damage caps (limitations of liability)
- Economic loss rules
- Statutory damages and the willfulness threshold
- Availability of equitable relief

☐ 5.6 Pure questions of law decided on undisputed facts
- Contract interpretation where the terms are unambiguous
- Statutory construction (*e.g.,* whether a document is a "consumer report")
- Preemption
- Choice of law

> When the court resolves an element as a matter of law rather than by finding no genuine dispute, say so: the holding transfers to other cases differently.

6 — FACTS

- ☐ 6.1 Identify the facts asserted by movant not to be in dispute
- ☐ 6.2 Identify the facts asserted by nonmovant to be in dispute, and any additional material facts the nonmovant asserted
- ☐ 6.3 Identify the facts the court treated as undisputed, including facts deemed undisputed for failure to address them (Rule 56(e)(2)) or established by order (Rule 56(g))
- ☐ 6.4 Identify the facts the court found genuinely disputed and material
- ☐ 6.5 Identify the facts the court found immaterial, and the substantive-law reason

7 — EVIDENCE

- ☐ 7.1 Describe the evidence cited by movant (direct, circumstantial or both) and any inferences that are asked to be drawn.
- ☐ 7.2 Describe the evidence cited by nonmovant (direct, circumstantial or both) and any inferences that are asked to be drawn.
- ☐ 7.3 Describe evidence the admissibility of which was challenged: the objection (hearsay, authentication, personal knowledge, expert qualification, best evidence, nondisclosure under Rule 26), the ruling, and whether the court asked only whether the content could be presented in admissible form at trial (Rule 56(c)(2)).

  - *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003)
  - *Sandoval v. County of San Diego*, 985 F.3d 657, 666 (9th Cir. 2021) (objections to the form of evidence at summary judgment are misplaced; content controls)

- ☐ 7.4 Describe any expert evidence and any Rule 702 ruling made with the motion.
- ☐ 7.5 Describe any declaration the court disregarded as a sham, and the finding it made.

  - *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998–99 (9th Cir. 2009)
  - *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266–67 (9th Cir. 1991) (the court must find that the contradiction was actually a sham; elaboration or clarification of earlier testimony is not one)

☐ 7.6 Describe any matters judicially noticed (Fed. R. Evid. 201) and any record material the court considered though not cited by a party (Rule 56(c)(3)).

8 — RULES CONSTRUED OR APPLIED

A rule is construed or applied when the court interprets the rule or applies it and gives the rationale. It is not necessary to note when the court simply states the rule ("we review summary judgment rulings *de novo*"). Subdivision references below are to the rule as amended effective December 1, 2010. Decisions before that date cite the earlier numbering; key them to the current subdivision using this concordance.

Before December 1, 2010	Subject	Current
56(a), 56(b)	who may move	56(a)
56(c)	the standard ("no genuine issue as to any material fact")	56(a); 56(c) is now Procedures
56(d)	case not fully adjudicated; facts established	56(g)
56(e)	affidavits; opposing party must set out specific facts	56(c)(1), 56(c)(4), 56(e)
56(f)	when affidavits are unavailable	56(d)
56(g)	affidavits in bad faith	56(h)
—	time to file; admissibility objection; materials not cited; judgment independent of the motion	56(b), 56(c)(2), 56(c)(3), 56(f), new in 2010

The 2010 Committee Note states that the standard for granting summary judgment is unchanged; the amendment substituted "dispute" for "issue" and restored "shall" after the 2007 restyling's "should."

☐ 8.1 Rule 56(a) Claim, defense, or part at issue; materiality; genuineness; legal entitlement; reasons for disposition stated on the record

RULE 56(A)

☐ 8.2 Burden framework under Rule 56(a) and *Celotex*: which party bears the burden of persuasion at trial on the element; whether a movant without that burden pointed to an absence of evidence or negated the element; the nonmovant's responsive burden; and any heightened substantive standard of proof the court imported.

- *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–25 (1986)
- *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157–61 (1970) (the movant's burden to show the absence of a genuine issue; pre-trilogy but still cited)
- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252–55 (1986) (the substantive evidentiary standard applies)
- *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102–03 (9th Cir. 2000)

RULE 56(A)

☐ 8.3 Inference and credibility rules: evidence viewed in the light most favorable to the nonmovant with all reasonable inferences drawn in its favor; no weighing of evidence or credibility determinations; the reasonableness limit on inferences; and the exception for an account blatantly contradicted by the record.

- *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)
- *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150–51 (2000)
- *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586–87 (1986)
- *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 468 (1992)
- *Scott v. Harris*, 550 U.S. 372, 380 (2007)

			• *Tolan v. Cotton*, 572 U.S. 650, 656–57 (2014) (per curiam) RULE 56(A)
☐	8.4	Rule 56(b) Timing under the rule, local rule, scheduling order, or court order	RULE 56(B)
☐	8.5	Rule 56(c)(1) Particular record citations supporting or disputing a fact; absence-of-proof showing	RULE 56(C)(1)
☐	8.6	Rule 56(c)(2) Whether cited material can be presented in a form that would be admissible in evidence; objections to form rather than content	• *Fraser v. Goodale*, 342 F.3d 1032, 1036–37 (9th Cir. 2003) • *Sandoval v. County of San Diego*, 985 F.3d 657, 666 (9th Cir. 2021) • *Orr v. Bank of Am., NT & SA*, 285 F.3d 764 (9th Cir. 2002) (authentication at summary judgment under the pre-2010 rule; read with Rule 56(c)(2) as amended) RULE 56(C)(2)
☐	8.7	Rule 56(c)(3) Whether the opinion limits review to cited materials or considers other record material	• *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001) (the court need not search the record for evidence not cited in the opposing papers) RULE 56(C)(3)
☐	8.8	Rule 56(c)(4) Personal knowledge, admissible facts, and witness competence for affidavits or declarations; unsworn declarations under 28 U.S.C. § 1746; sham-affidavit determinations	• *Van Asdale v. Int'l Game Tech.*, 577 F.3d 989, 998–99 (9th Cir. 2009) • *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266–67 (9th Cir. 1991) RULE 56(C)(4)
☐	8.9	Rule 56(d) Specified unavailable facts and requested time, discovery, deferral, or denial	• *Tatum v. City & County of San Francisco*, 441 F.3d 1090, 1100 (9th Cir. 2006) RULE 56(D)
☐	8.10	Rule 56(e) Consequences of failing properly to support or address a fact	• *Heinemann v. Satterberg*, 731 F.3d 914, 916–17 (9th Cir. 2013) (a local rule cannot authorize summary judgment by default; the court must determine whether the movant is entitled to it) RULE 56(E)
☐	8.11	Rule 56(f) Notice and reasonable response time before relief independent of the motion	RULE 56(F)

☐ 8.12 Rule 56(g) Undisputed material facts treated as established when full relief is not granted

RULE 56(G)

☐ 8.13 Rule 56(h) Bad-faith or delay declarations; notice, expenses, fees, contempt, or other sanctions

RULE 56(H)

☐ 8.14 Local rules and standing orders: separate statements of undisputed facts and statements of genuine disputes; deemed-admitted provisions; page and evidence-format requirements; consequences of noncompliance; and any conflict with Rule 56 (the local rule yields, Rule 83(a)(1)).

- *Heinemann v. Satterberg*, 731 F.3d 914, 916–17 (9th Cir. 2013)

LOCAL RULES

☐ 8.15 Other rules and statutes construed with Rule 56

- Rule 12(d) (conversion)
- Rules 26(a), 26(e), and 37(c)(1) (exclusion of undisclosed evidence at summary judgment)
- Rule 50 (the judgment-as-a-matter-of-law standard mirrors Rule 56; preservation of issues decided at summary judgment)
- Rule 52 (decision on a stipulated record)
- Rules 54(b), 58, 59(e), and 60(b) (finality, entry of judgment, reconsideration)
- Rule 72 and 28 U.S.C. § 636 (magistrate judge review)
- Federal Rules of Evidence 201, 702, 801–803, and 901
- 28 U.S.C. § 1746 (unsworn declarations)

- *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)
- *Ortiz v. Jordan*, 562 U.S. 180 (2011)
- *Dupree v. Younger*, 598 U.S. 729 (2023)

OTHER RULES

9 — QUESTIONS OR ISSUES PRESENTED

☐ 9.1 Describe how the court characterized the question or issue presented: on appeal, as the court framed it; in the district court, as the court framed the issues raised by the motion.

10 — DISPOSITION

☐ 10.1 Describe how the court disposed of the motion, using this vocabulary: granted, denied, or granted in part, and as to which claims, defenses, and parties; any facts established under Rule 56(g); any relief under Rule 56(d); whether judgment was entered (Rule 58) or certified (Rule 54(b)). On appeal: affirmed, reversed, vacated, or remanded, in whole or in part, and the instructions on remand.

☐ 10.2 State the holding in one sentence.

11 — REASONING

☐ 11.1 Describe the court's reasoning for the disposition, including its identification of binding and persuasive authority, the inferences it draws from the record, and whether it decided the motion on the ground argued or on an alternative ground (Rule 56(f)(2)). Note any alternative holdings.

12 — LIMITATIONS

☐ 12.1 Describe any self-described limitation on the holding, including matters assumed without deciding, alternative holdings, and dicta the court flagged as such.

> Example: "We express no view on whether the circumstantial evidence does create a genuine dispute of material fact in this regard."

13 — OPEN QUESTIONS

☐ 13.1 Describe any issues remanded or reserved for trial that must be decided to finally resolve the case.

☐ 13.2 Describe any legal questions the court identified as open or unsettled, including any circuit split it noted.

14 — PROPOSITIONS FOR WHICH THE CASE IS AUTHORITY

☐ 14.1 Propositions that a movant could cite, each with a pinpoint citation and marked as holding, alternative holding, or dictum

☐ 14.2 Propositions that a nonmovant could cite, each with a pinpoint citation and marked as holding, alternative holding, or dictum

☐ 14.3 Quotable passages, verbatim and with pinpoint citations

> Quote exactly as the opinion reads, including internal quotation marks and citations, and verify against the opinion text. Paraphrase belongs in 14.1 and 14.2, never inside quotation marks.

☐ 14.4 Statute and claim tags from the controlled vocabulary (*e.g.,* FCRA § 1681e(b); § 1681i; § 1681s-2(b); Rule 23; standing)

15 — SUBSEQUENT HISTORY

☐ 15.1 Appellate history of this decision: affirmed, reversed, or vacated, in whole or in part; rehearing granted or denied; amended or superseding opinion; rehearing *en banc* granted; certiorari granted or denied; grant, vacate, and remand. Record the citation to be used.

> This is the check most likely to be silently wrong. In the Ninth Circuit an amended opinion supersedes the original, and an order granting rehearing *en banc* withdraws the panel opinion from citation.

☐ 15.2 Identify cases overruling the holding.

☐ 15.3 Identify intervening higher authority that abrogates the holding.

> - *Miller v. Gammie*, 335 F.3d 889, 892–93 (9th Cir. 2003) (en banc) (circuit precedent is abrogated when intervening higher authority is "clearly irreconcilable" with it)

☐ 15.4 Identify any rule or statutory amendment that supersedes the holding, with its effective date.

> *E.g.,* authentication holdings under the pre-2010 rule, such as *Orr*, must be read with Rule 56(c)(2) as amended and *Sandoval*.

☐ 15.5 Identify cases distinguishing the holding.

☐ 15.6 Identify cases criticizing, questioning, or limiting the holding.

☐ 15.7 Identify cases following the holding (positive treatment): count and most recent date.

☐ 15.8 Record the date and source through which items 15.1 to 15.7 were verified (*e.g.,* CourtListener bulk export of a stated date; Ninth Circuit daily opinions export).

> Enter the same date in the header field.

☐ 15.9 Cross-reference other brief bank entries: cases cited by this decision, and cases citing it, that are in the bank.

16 — COUNSEL

Identify the firms making an appearance, noting the names of attorneys who argued on appeal. It is not necessary to list every appearance of individual attorneys. This section supports conflict checks and identification of recurring counsel.

☐ 16.1 Movant (appellant or appellee on appeal; note the role)

☐ 16.2 Nonmovant (appellant or appellee on appeal; note the role)

☐ 16.3 Amici, if any

NOTES AND EXCEPTIONS

Record each unmarked item by reference number, the reason it could not be satisfied, and the disposition. An item left unmarked without an entry here is treated as unresolved. Items marked N/A because they cannot apply to the decision briefed (for example, items 3.3 to 3.12 and 4.2 to 4.3 for a district court decision) need no entry.

SIGN-OFF

The reviewer certifies that each marked item was checked against the instruction opposite it. The supervising attorney certifies that the entry is fit for use in the brief bank.

REVIEWER — SIGNATURE	DATE
SUPERVISING ATTORNEY — SIGNATURE	DATE