



POST-TRIAL MOTIONS CHEAT SHEET

After a hearing, there are various types of motions, called post-trial motions, that can be filed to try to change the order that was made. This chart provides some of the rules to some of the basic types of post-trial motions and their effect on the timing of filing an appeal of the original order. This is a quick reference guide, so beware that there are many exceptions to the general rules stated here and more detailed provisions in the statutes. It is recommended to consult with an attorney, if possible, on these motions.

CCP = Code of Civil Procedure
 CRC = California Rules of Court

TYPE OF MOTION	GROUNDS	TIMING	APPEALABILITY	DEADLINE TO FILE APPEAL
Motion for Reconsideration	New or different facts, circumstances, or law. CCP § 1008(a)	10 days after service of the written notice of entry of order. To be safe, this might be calculated from the date of the order if it was served on the same day as the order was made. CCP § 1008(a)	Not appealable. CCP § 1008(g)	Extends the time to appeal the underlying appealable order (the original court order) until the earliest of: (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; (2) 90 days after the first motion to reconsider is filed; or (3) 180 days after entry of the appealable order. CRC, Rule 8.108(e)

TYPE OF MOTION	GROUNDS	TIMING	APPEALABILITY	DEADLINE TO FILE APPEAL
Motion for New Trial	<p>(1) Irregularity in the proceedings / no fair trial;</p> <p>(2) Misconduct of the jury;</p> <p>(3) Accident or surprise;</p> <p>(4) Newly discovered evidence;</p> <p>(5) Excessive or inadequate damages;</p> <p>(6) Not sufficient evidence to justify the trial court's decision, or the decision is against the law;</p> <p>(7) Error in the law.</p> <p>CCP § 657</p>	<p>After the decision is made and before the entry of judgment.</p> <p>OR</p> <p>No later than the earliest of:</p> <p>(a) Within 15 days after the clerk's mailing of notice of entry of judgment ("NOEJ");</p> <p>(b) Within 15 days of being served by any party the written NOEJ (i.e. service of a file-stamped copy of the judgment); or</p> <p>(c) 180 days after entry of judgment.</p> <p>CCP § 659(a)</p>	<p>If granted: appealable.</p> <p>CCP § 904.1(a)(4)</p> <p>If denied: not appealable, but extends time to appeal the original court order.</p> <p>CRC, Rule 8.108(b)</p>	<p>If granted: normal time to appeal under CRC, Rule 8.104.</p> <p>If denied, the time to appeal is extended for all parties until the earliest of:</p> <p>(A) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order;</p> <p>(B) 30 days after denial of the motion by operation of law; or</p> <p>(C) 180 days after entry of judgment.</p> <p>CRC, Rule 8.108(b)</p>
Motion to Vacate	<p>(1) Incorrect or erroneous legal basis not consistent with or not supported by the facts.</p> <p>(2) A judgment or decree not consistent with or not supported by the special verdict.</p> <p>CCP § 663</p>	<p>After the decision is made and before the entry of judgment.</p> <p>OR</p> <p>No later than the earliest of:</p> <p>(a) Within 15 days of the date of mailing of NOEJ by the clerk;</p>	<p>Extends time to appeal the original judgment.</p> <p>CRC 8.108(c).</p>	<p>The time to appeal the original judgment is extended until the earliest of:</p> <p>(1) 30 days after the superior court clerk or a party serves an order denying the motion to vacate or a notice of entry of that order;</p>

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		(b) Within 15 days of being served by any party the written NOEJ; or (c) within 180 days after entry of judgment. CCP § 663a		(2) 90 days after the first notice of intention to move- or motion-is filed; or (3) 180 days after entry of judgment. CRC, Rule 8.108(c)
Motion to Set Aside under CCP § 473(b) (discretionary)	Discretionary relief based on mistake, inadvertence, surprise or excusable neglect. CCP § 473(b)	Within a reasonable time not to exceed six months after the judgment, dismissal, order, or other proceeding. CCP § 473(b)	Appealable under 904.1(a)(2). Generally, these motions are not appealable. However, if the underlying order is appealable as a final judgment (under CCP § 904.1(a)(1)), then the motion to set aside would be appealable under CCP § 904.1(a)(2) as an order made after a final judgment.	The time to appeal from the original judgment is extended until the earliest of: (1) 30 days after the superior court clerk or a party serves an order denying the motion or a notice of entry of that order; (2) 90 days after the first notice of intention to move- or motion-is filed; (3) 180 days after entry of judgment. CRC, Rule 8.108(c) (see Advisory Committee Comment, subdivision (c).)
Motion to Correct Clerical Error	(1) Correct clerical errors to conform order(s)/judgment(s) to the order that was actually made.	At any time, regardless of when the mistake was made.	Appealable under 904.1(a)(2). Generally, these motions would not be appealable. However, if the underlying	Time is extended per 8.108(c) if "any party serves and files a valid motion to vacate the judgment."

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	(2) Set aside any void judgments or orders. CCP § 473(d).		order is appealable as a final judgment (under CCP § 904.1(a)(1)), then the motion to correct clerical error would be appealable under CCP § 904.1(a)(2) as an order made after a final judgment.	<i>(Shisler v. Sanfer Sports Cars, Inc. (2008) 167 Cal.App.4th 1, 5 (motion brought under 473(d) subject to 8.108(c) extension of time).)</i>

Please contact FVAP at info@fvaplaw.org or (510) 380-6243 with questions.

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