

1 **II. LEGAL STANDARD ON A MOTION FOR SUMMARY JUDGMENT**

2 The party moving for summary judgment has the initial burden of
3 establishing that there is "no genuine issue as to any material fact
4 and that [it] is entitled to a judgment as a matter of law." Fed. R.
5 Civ. P. 56(c); see British Airways Bd. v. Boeing Co., 585 F.2d 946,
6 951 (9th Cir. 1978); Fremont Indemnity Co. v. California Nat'l
7 Physician's Insurance Co., 954 F. Supp. 1399, 1402 (C.D. Cal. 1997).

8 If the moving party has the burden of proof at trial (e.g., a
9 plaintiff on a claim for relief, or a defendant on an affirmative
10 defense), the moving party must make a "showing sufficient for the
11 court to hold that no reasonable trier of fact could find other than
12 for the moving party." Calderone v. United States, 799 F.2d 254, 259
13 (6th Cir. 1986) (quoting from Schwarzer, Summary Judgment Under the
14 Federal Rules: Defining Genuine Issues of Material Fact, 99 F.R.D.
15 465, 487-88 (1984)). Thus, if the moving party has the burden of
16 proof at trial, that party "must establish beyond peradventure all of
17 the essential elements of the claim or defense to warrant judgment in
18 [its] favor." Fontenot v. Upjohn Co., 780 F.2d 1190, 1194 (5th Cir.
19 1986) (emphasis in original); see Calderone, 799 F.2d at 259.

20 If the opponent has the burden of proof at trial, the moving
21 party has no burden to negate the opponent's claim. Celotex Corp. v.
22 Catrett, 477 U.S. 317, 323 (1986). The moving party does not have the
23 burden to produce any evidence showing the absence of a genuine issue
24 of material fact. Id. at 325. "Instead, . . . the burden on the
25 moving party may be discharged by 'showing'--that is, pointing out to
26 the district court--that there is an absence of evidence to support
27 the nonmoving party's case." Id. (citations omitted).

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