

ASSEMBLY BILL

No. 715

Introduced by Assembly Member Dickinson

February 21, 2013

An act to amend Section 437c of the Code of Civil Procedure, relating to summary judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 715, as introduced, Dickinson. Summary judgment: rulings on admissibility of evidence: de novo standard of review.

Existing law authorizes a party, pursuant to a specified procedure, to move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Existing law requires the motion to be supported by, and provides that any opposition to the motion shall consist of, affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. Upon a court's order granting summary judgment, existing law authorizes a party to appeal from the judgment, as specified.

This bill would require a reviewing court to review a ruling on the admissibility of evidence in the summary judgment proceeding using a de novo standard of review.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 437c of the Code of Civil Procedure, as
2 amended by Section 3 of Chapter 419 of the Statutes of 2011, is
3 amended to read:

4 437c. (a) Any party may move for summary judgment in any
5 action or proceeding if it is contended that the action has no merit
6 or that there is no defense to the action or proceeding. The motion
7 may be made at any time after 60 days have elapsed since the
8 general appearance in the action or proceeding of each party against
9 whom the motion is directed or at any earlier time after the general
10 appearance that the court, with or without notice and upon good
11 cause shown, may direct. Notice of the motion and supporting
12 papers shall be served on all other parties to the action at least 75
13 days before the time appointed for hearing. However, if the notice
14 is served by mail, the required 75-day period of notice shall be
15 increased by five days if the place of address is within the State
16 of California, 10 days if the place of address is outside the State
17 of California but within the United States, and 20 days if the place
18 of address is outside the United States, and if the notice is served
19 by facsimile transmission, Express Mail, or another method of
20 delivery providing for overnight delivery, the required 75-day
21 period of notice shall be increased by two court days. The motion
22 shall be heard no later than 30 days before the date of trial, unless
23 the court for good cause orders otherwise. The filing of the motion
24 shall not extend the time within which a party must otherwise file
25 a responsive pleading.

26 (b) (1) The motion shall be supported by affidavits, declarations,
27 admissions, answers to interrogatories, depositions, and matters
28 of which judicial notice shall or may be taken. The supporting
29 papers shall include a separate statement setting forth plainly and
30 concisely all material facts which the moving party contends are
31 undisputed. Each of the material facts stated shall be followed by
32 a reference to the supporting evidence. The failure to comply with
33 this requirement of a separate statement may in the court's
34 discretion constitute a sufficient ground for denial of the motion.

35 (2) Any opposition to the motion shall be served and filed not
36 less than 14 days preceding the noticed or continued date of
37 hearing, unless the court for good cause orders otherwise. The
38 opposition, where appropriate, shall consist of affidavits,

1 declarations, admissions, answers to interrogatories, depositions,
2 and matters of which judicial notice shall or may be taken.

3 (3) The opposition papers shall include a separate statement
4 that responds to each of the material facts contended by the moving
5 party to be undisputed, indicating whether the opposing party
6 agrees or disagrees that those facts are undisputed. The statement
7 also shall set forth plainly and concisely any other material facts
8 that the opposing party contends are disputed. Each material fact
9 contended by the opposing party to be disputed shall be followed
10 by a reference to the supporting evidence. Failure to comply with
11 this requirement of a separate statement may constitute a sufficient
12 ground, in the court's discretion, for granting the motion.

13 (4) Any reply to the opposition shall be served and filed by the
14 moving party not less than five days preceding the noticed or
15 continued date of hearing, unless the court for good cause orders
16 otherwise.

17 (5) Evidentiary objections not made at the hearing shall be
18 deemed waived.

19 (6) Except for subdivision (c) of Section 1005 relating to the
20 method of service of opposition and reply papers, Sections 1005
21 and 1013, extending the time within which a right may be exercised
22 or an act may be done, do not apply to this section.

23 (7) Any incorporation by reference of matter in the court's file
24 shall set forth with specificity the exact matter to which reference
25 is being made and shall not incorporate the entire file.

26 (c) The motion for summary judgment shall be granted if all
27 the papers submitted show that there is no triable issue as to any
28 material fact and that the moving party is entitled to a judgment
29 as a matter of law. In determining whether the papers show that
30 there is no triable issue as to any material fact the court shall
31 consider all of the evidence set forth in the papers, except that to
32 which objections have been made and sustained by the court, and
33 all inferences reasonably deducible from the evidence, except
34 summary judgment may not be granted by the court based on
35 inferences reasonably deducible from the evidence, if contradicted
36 by other inferences or evidence, which raise a triable issue as to
37 any material fact.

38 (d) Supporting and opposing affidavits or declarations shall be
39 made by any person on personal knowledge, shall set forth
40 admissible evidence, and shall show affirmatively that the affiant

1 is competent to testify to the matters stated in the affidavits or
2 declarations. Any objections based on the failure to comply with
3 the requirements of this subdivision shall be made at the hearing
4 or shall be deemed waived.

5 (e) If a party is otherwise entitled to a summary judgment
6 pursuant to this section, summary judgment may not be denied on
7 grounds of credibility or for want of cross-examination of witnesses
8 furnishing affidavits or declarations in support of the summary
9 judgment, except that summary judgment may be denied in the
10 discretion of the court, where the only proof of a material fact
11 offered in support of the summary judgment is an affidavit or
12 declaration made by an individual who was the sole witness to that
13 ~~fact~~; *fact*, or where a material fact is an individual's state of mind,
14 or lack thereof, and that fact is sought to be established solely by
15 the individual's affirmation thereof.

16 (f) (1) A party may move for summary adjudication as to one
17 or more causes of action within an action, one or more affirmative
18 defenses, one or more claims for damages, or one or more issues
19 of duty, if that party contends that the cause of action has no merit
20 or that there is no affirmative defense thereto, or that there is no
21 merit to an affirmative defense as to any cause of action, or both,
22 or that there is no merit to a claim for damages, as specified in
23 Section 3294 of the Civil Code, or that one or more defendants
24 either owed or did not owe a duty to the plaintiff or plaintiffs. A
25 motion for summary adjudication shall be granted only if it
26 completely disposes of a cause of action, an affirmative defense,
27 a claim for damages, or an issue of duty.

28 (2) A motion for summary adjudication may be made by itself
29 or as an alternative to a motion for summary judgment and shall
30 proceed in all procedural respects as a motion for summary
31 judgment. However, a party may not move for summary judgment
32 based on issues asserted in a prior motion for summary adjudication
33 and denied by the court, unless that party establishes to the
34 satisfaction of the court, newly discovered facts or circumstances
35 or a change of law supporting the issues reasserted in the summary
36 judgment motion.

37 (g) Upon the denial of a motion for summary judgment, on the
38 ground that there is a triable issue as to one or more material facts,
39 the court shall, by written or oral order, specify one or more
40 material facts raised by the motion as to which the court has

1 determined there exists a triable controversy. This determination
2 shall specifically refer to the evidence proffered in support of and
3 in opposition to the motion which indicates that a triable
4 controversy exists. Upon the grant of a motion for summary
5 judgment, on the ground that there is no triable issue of material
6 fact, the court shall, by written or oral order, specify the reasons
7 for its determination. The order shall specifically refer to the
8 evidence proffered in support of, and if applicable in opposition
9 to, the motion which indicates that no triable issue exists. The court
10 shall also state its reasons for any other determination. The court
11 shall record its determination by court reporter or written order.

12 (h) If it appears from the affidavits submitted in opposition to
13 a motion for summary judgment or summary adjudication or both
14 that facts essential to justify opposition may exist but cannot, for
15 reasons stated, then be presented, the court shall deny the motion,
16 or order a continuance to permit affidavits to be obtained or
17 discovery to be had or may make any other order as may be just.
18 The application to continue the motion to obtain necessary
19 discovery may also be made by ex parte motion at any time on or
20 before the date the opposition response to the motion is due.

21 (i) If, after granting a continuance to allow specified additional
22 discovery, the court determines that the party seeking summary
23 judgment has unreasonably failed to allow the discovery to be
24 conducted, the court shall grant a continuance to permit the
25 discovery to go forward or deny the motion for summary judgment
26 or summary adjudication. This section does not affect or limit the
27 ability of any party to compel discovery under the Civil Discovery
28 Act (Title 4 (commencing with Section 2016.010) of Part 4).

29 (j) If the court determines at any time that any of the affidavits
30 are presented in bad faith or solely for purposes of delay, the court
31 shall order the party presenting the affidavits to pay the other party
32 the amount of the reasonable expenses which the filing of the
33 affidavits caused the other party to incur. Sanctions may not be
34 imposed pursuant to this subdivision, except on notice contained
35 in a party's papers, or on the court's own noticed motion, and after
36 an opportunity to be heard.

37 (k) Except when a separate judgment may properly be awarded
38 in the action, no final judgment may be entered on a motion for
39 summary judgment prior to the termination of the action, but the
40 final judgment shall, in addition to any matters determined in the

1 action, award judgment as established by the summary proceeding
2 herein provided for.

3 (l) In actions which arise out of an injury to the person or to
4 property, if a motion for summary judgment was granted on the
5 basis that the defendant was without fault, no other defendant
6 during trial, over plaintiff's objection, may attempt to attribute
7 fault to or comment on the absence or involvement of the defendant
8 who was granted the motion.

9 (m) ~~(H)~~—A summary judgment entered under this section is an
10 appealable judgment as in other cases. Upon entry of any order
11 pursuant to this section, except the entry of summary judgment, a
12 party may, within 20 days after service upon him or her of a written
13 notice of entry of the order, petition an appropriate reviewing court
14 for a peremptory writ. If the notice is served by mail, the initial
15 period within which to file the petition shall be increased by five
16 days if the place of address is within the State of California, 10
17 days if the place of address is outside the State of California but
18 within the United States, and 20 days if the place of address is
19 outside the United States. If the notice is served by facsimile
20 transmission, Express Mail, or another method of delivery
21 providing for overnight delivery, the initial period within which
22 to file the petition shall be increased by two court days. The
23 superior court may, for good cause, and prior to the expiration of
24 the initial period, extend the time for one additional period not to
25 exceed 10 days.

26 (1) *A reviewing court shall review a ruling on the admissibility*
27 *of evidence pursuant to this section using a de novo standard of*
28 *review.*

29 (2) Before a reviewing court affirms an order granting summary
30 judgment or summary adjudication on a ground not relied upon
31 by the trial court, the reviewing court shall afford the parties an
32 opportunity to present their views on the issue by submitting
33 supplemental briefs. The supplemental briefing may include an
34 argument that additional evidence relating to that ground exists,
35 but that the party has not had an adequate opportunity to present
36 the evidence or to conduct discovery on the issue. The court may
37 reverse or remand based upon the supplemental briefing to allow
38 the parties to present additional evidence or to conduct discovery
39 on the issue. If the court fails to allow supplemental briefing, a
40 rehearing shall be ordered upon timely petition of any party.

1 (n) (1) If a motion for summary adjudication is granted, at the
2 trial of the action, the cause or causes of action within the action,
3 affirmative defense or defenses, claim for damages, or issue or
4 issues of duty as to the motion which has been granted shall be
5 deemed to be established and the action shall proceed as to the
6 cause or causes of action, affirmative defense or defenses, claim
7 for damages, or issue or issues of duty remaining.

8 (2) In the trial of the action, the fact that a motion for summary
9 adjudication is granted as to one or more causes of action,
10 affirmative defenses, claims for damages, or issues of duty within
11 the action shall not operate to bar any cause of action, affirmative
12 defense, claim for damages, or issue of duty as to which summary
13 adjudication was either not sought or denied.

14 (3) In the trial of an action, neither a party, nor a witness, nor
15 the court shall comment upon the grant or denial of a motion for
16 summary adjudication to a jury.

17 (o) A cause of action has no merit if either of the following
18 exists:

19 (1) One or more of the elements of the cause of action cannot
20 be separately established, even if that element is separately pleaded.

21 (2) A defendant establishes an affirmative defense to that cause
22 of action.

23 (p) For purposes of motions for summary judgment and
24 summary adjudication:

25 (1) A plaintiff or cross-complainant has met his or her burden
26 of showing that there is no defense to a cause of action if that party
27 has proved each element of the cause of action entitling the party
28 to judgment on that cause of action. Once the plaintiff or
29 cross-complainant has met that burden, the burden shifts to the
30 defendant or cross-defendant to show that a triable issue of one or
31 more material facts exists as to that cause of action or a defense
32 thereto. The defendant or cross-defendant may not rely upon the
33 mere allegations or denials of its pleadings to show that a triable
34 issue of material fact exists but, instead, shall set forth the specific
35 facts showing that a triable issue of material fact exists as to that
36 cause of action or a defense thereto.

37 (2) A defendant or cross-defendant has met his or her burden
38 of showing that a cause of action has no merit if that party has
39 shown that one or more elements of the cause of action, even if
40 not separately pleaded, cannot be established, or that there is a

1 complete defense to that cause of action. Once the defendant or
2 cross-defendant has met that burden, the burden shifts to the
3 plaintiff or cross-complainant to show that a triable issue of one
4 or more material facts exists as to that cause of action or a defense
5 thereto. The plaintiff or cross-complainant may not rely upon the
6 mere allegations or denials of its pleadings to show that a triable
7 issue of material fact exists but, instead, shall set forth the specific
8 facts showing that a triable issue of material fact exists as to that
9 cause of action or a defense thereto.

10 (q) This section does not extend the period for trial provided by
11 Section 1170.5.

12 (r) Subdivisions (a) and (b) do not apply to actions brought
13 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
14 of Part 3.

15 (s) (1) Notwithstanding subdivision (f), a party may move for
16 summary adjudication of a legal issue or a claim for damages other
17 than punitive damages that does not completely dispose of a cause
18 of action, an affirmative defense, or an issue of duty.

19 (2) This motion may be brought only upon the stipulation of
20 the parties whose claims or defenses are put at issue by the motion
21 and a prior determination and order by the court that the motion
22 will further the interests of judicial economy, by reducing the time
23 to be consumed in trial, or significantly increase the ability of the
24 parties to resolve the case by settlement.

25 (3) Before a motion may be filed pursuant to this subdivision,
26 the parties shall submit to the court a joint stipulation clearly setting
27 forth the issue or issues to be adjudicated, with a declaration from
28 each stipulating party demonstrating that a ruling on the motion
29 will further the interests of judicial economy by reducing the time
30 to be consumed in trial or significantly increasing the probability
31 of settlement. Within 15 days of the court's receipt of the
32 stipulation and declarations, unless the court has good cause for
33 extending the time in which to make the determination, the court
34 shall notify the submitting parties as to whether the motion may
35 be filed. If the court elects not to allow the filing of the motion,
36 the stipulating parties may request, and upon that request the court
37 shall conduct, an informal conference with the stipulating parties
38 to permit further evaluation of the proposed stipulation; but no
39 further papers may be filed by the parties in support of the proposed
40 motion.

1 (4) Any motion for summary adjudication brought under this
2 subdivision shall contain the following language, or its substantial
3 equivalent, in the notice of motion:

4
5 “This motion is made pursuant to subdivision (s) of Section 437c
6 of the Code of Civil Procedure. The parties to this motion stipulate
7 that the court shall hear the motion and that the resolution of this
8 motion will either further the interests of judicial economy by
9 reducing the time to be consumed in trial or significantly increase
10 the ability of the parties to resolve the case by settlement.”

11
12 (5) The notice of motion shall be signed by counsel for all
13 parties, and by those parties in propria persona, to the motion.

14 (6) The joint stipulation shall be served on all parties, if any,
15 who are not parties to the motion specified in paragraph (1). If,
16 within 10 days of the submission of the stipulation, any
17 nonstipulating party files an objection to the determination of the
18 issue, the court may consider the objection in determining whether
19 or not to allow the motion to be filed.

20 (7) A motion for summary adjudication brought pursuant to this
21 subdivision may be made by itself or as an alternative to a motion
22 for summary judgment and shall proceed in all procedural respects
23 as a motion for summary judgment.

24 (t) For the purposes of this section, a change in law does not
25 include a later enacted statute without retroactive application.

26 (u) This section shall remain in effect only until January 1, 2015,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before January 1, 2015, deletes or extends that date.

29 SEC. 2. Section 437c of the Code of Civil Procedure, as added
30 by Section 4 of Chapter 419 of the Statutes of 2011, is amended
31 to read:

32 437c. (a) Any party may move for summary judgment in any
33 action or proceeding if it is contended that the action has no merit
34 or that there is no defense to the action or proceeding. The motion
35 may be made at any time after 60 days have elapsed since the
36 general appearance in the action or proceeding of each party against
37 whom the motion is directed or at any earlier time after the general
38 appearance that the court, with or without notice and upon good
39 cause shown, may direct. Notice of the motion and supporting
40 papers shall be served on all other parties to the action at least 75

1 days before the time appointed for hearing. However, if the notice
2 is served by mail, the required 75-day period of notice shall be
3 increased by five days if the place of address is within the State
4 of California, 10 days if the place of address is outside the State
5 of California but within the United States, and 20 days if the place
6 of address is outside the United States, and if the notice is served
7 by facsimile transmission, Express Mail, or another method of
8 delivery providing for overnight delivery, the required 75-day
9 period of notice shall be increased by two court days. The motion
10 shall be heard no later than 30 days before the date of trial, unless
11 the court for good cause orders otherwise. The filing of the motion
12 shall not extend the time within which a party must otherwise file
13 a responsive pleading.

14 (b) (1) The motion shall be supported by affidavits, declarations,
15 admissions, answers to interrogatories, depositions, and matters
16 of which judicial notice shall or may be taken. The supporting
17 papers shall include a separate statement setting forth plainly and
18 concisely all material facts which the moving party contends are
19 undisputed. Each of the material facts stated shall be followed by
20 a reference to the supporting evidence. The failure to comply with
21 this requirement of a separate statement may in the court's
22 discretion constitute a sufficient ground for denial of the motion.

23 (2) Any opposition to the motion shall be served and filed not
24 less than 14 days preceding the noticed or continued date of
25 hearing, unless the court for good cause orders otherwise. The
26 opposition, where appropriate, shall consist of affidavits,
27 declarations, admissions, answers to interrogatories, depositions,
28 and matters of which judicial notice shall or may be taken.

29 (3) The opposition papers shall include a separate statement
30 that responds to each of the material facts contended by the moving
31 party to be undisputed, indicating whether the opposing party
32 agrees or disagrees that those facts are undisputed. The statement
33 also shall set forth plainly and concisely any other material facts
34 that the opposing party contends are disputed. Each material fact
35 contended by the opposing party to be disputed shall be followed
36 by a reference to the supporting evidence. Failure to comply with
37 this requirement of a separate statement may constitute a sufficient
38 ground, in the court's discretion, for granting the motion.

39 (4) Any reply to the opposition shall be served and filed by the
40 moving party not less than five days preceding the noticed or

1 continued date of hearing, unless the court for good cause orders
2 otherwise.

3 (5) Evidentiary objections not made at the hearing shall be
4 deemed waived.

5 (6) Except for subdivision (c) of Section 1005 relating to the
6 method of service of opposition and reply papers, Sections 1005
7 and 1013, extending the time within which a right may be exercised
8 or an act may be done, do not apply to this section.

9 (7) Any incorporation by reference of matter in the court's file
10 shall set forth with specificity the exact matter to which reference
11 is being made and shall not incorporate the entire file.

12 (c) The motion for summary judgment shall be granted if all
13 the papers submitted show that there is no triable issue as to any
14 material fact and that the moving party is entitled to a judgment
15 as a matter of law. In determining whether the papers show that
16 there is no triable issue as to any material fact the court shall
17 consider all of the evidence set forth in the papers, except that to
18 which objections have been made and sustained by the court, and
19 all inferences reasonably deducible from the evidence, except
20 summary judgment may not be granted by the court based on
21 inferences reasonably deducible from the evidence, if contradicted
22 by other inferences or evidence, which raise a triable issue as to
23 any material fact.

24 (d) Supporting and opposing affidavits or declarations shall be
25 made by any person on personal knowledge, shall set forth
26 admissible evidence, and shall show affirmatively that the affiant
27 is competent to testify to the matters stated in the affidavits or
28 declarations. Any objections based on the failure to comply with
29 the requirements of this subdivision shall be made at the hearing
30 or shall be deemed waived.

31 (e) If a party is otherwise entitled to a summary judgment
32 pursuant to this section, summary judgment may not be denied on
33 grounds of credibility or for want of cross-examination of witnesses
34 furnishing affidavits or declarations in support of the summary
35 judgment, except that summary judgment may be denied in the
36 discretion of the court, where the only proof of a material fact
37 offered in support of the summary judgment is an affidavit or
38 declaration made by an individual who was the sole witness to that
39 ~~fact~~, fact, or where a material fact is an individual's state of mind,

1 or lack thereof, and that fact is sought to be established solely by
2 the individual’s affirmation thereof.

3 (f) (1) A party may move for summary adjudication as to one
4 or more causes of action within an action, one or more affirmative
5 defenses, one or more claims for damages, or one or more issues
6 of duty, if that party contends that the cause of action has no merit
7 or that there is no affirmative defense thereto, or that there is no
8 merit to an affirmative defense as to any cause of action, or both,
9 or that there is no merit to a claim for damages, as specified in
10 Section 3294 of the Civil Code, or that one or more defendants
11 either owed or did not owe a duty to the plaintiff or plaintiffs. A
12 motion for summary adjudication shall be granted only if it
13 completely disposes of a cause of action, an affirmative defense,
14 a claim for damages, or an issue of duty.

15 (2) A motion for summary adjudication may be made by itself
16 or as an alternative to a motion for summary judgment and shall
17 proceed in all procedural respects as a motion for summary
18 judgment. However, a party may not move for summary judgment
19 based on issues asserted in a prior motion for summary adjudication
20 and denied by the court, unless that party establishes to the
21 satisfaction of the court, newly discovered facts or circumstances
22 or a change of law supporting the issues reasserted in the summary
23 judgment motion.

24 (g) Upon the denial of a motion for summary judgment, on the
25 ground that there is a triable issue as to one or more material facts,
26 the court shall, by written or oral order, specify one or more
27 material facts raised by the motion as to which the court has
28 determined there exists a triable controversy. This determination
29 shall specifically refer to the evidence proffered in support of and
30 in opposition to the motion which indicates that a triable
31 controversy exists. Upon the grant of a motion for summary
32 judgment, on the ground that there is no triable issue of material
33 fact, the court shall, by written or oral order, specify the reasons
34 for its determination. The order shall specifically refer to the
35 evidence proffered in support of, and if applicable in opposition
36 to, the motion which indicates that no triable issue exists. The court
37 shall also state its reasons for any other determination. The court
38 shall record its determination by court reporter or written order.

39 (h) If it appears from the affidavits submitted in opposition to
40 a motion for summary judgment or summary adjudication or both

1 that facts essential to justify opposition may exist but cannot, for
2 reasons stated, then be presented, the court shall deny the motion,
3 or order a continuance to permit affidavits to be obtained or
4 discovery to be had or may make any other order as may be just.
5 The application to continue the motion to obtain necessary
6 discovery may also be made by ex parte motion at any time on or
7 before the date the opposition response to the motion is due.

8 (i) If, after granting a continuance to allow specified additional
9 discovery, the court determines that the party seeking summary
10 judgment has unreasonably failed to allow the discovery to be
11 conducted, the court shall grant a continuance to permit the
12 discovery to go forward or deny the motion for summary judgment
13 or summary adjudication. This section does not affect or limit the
14 ability of any party to compel discovery under the Civil Discovery
15 Act (Title 4 (commencing with Section 2016.010) of Part 4).

16 (j) If the court determines at any time that any of the affidavits
17 are presented in bad faith or solely for purposes of delay, the court
18 shall order the party presenting the affidavits to pay the other party
19 the amount of the reasonable expenses which the filing of the
20 affidavits caused the other party to incur. Sanctions may not be
21 imposed pursuant to this subdivision, except on notice contained
22 in a party's papers, or on the court's own noticed motion, and after
23 an opportunity to be heard.

24 (k) Except when a separate judgment may properly be awarded
25 in the action, no final judgment may be entered on a motion for
26 summary judgment prior to the termination of the action, but the
27 final judgment shall, in addition to any matters determined in the
28 action, award judgment as established by the summary proceeding
29 herein provided for.

30 (l) In actions which arise out of an injury to the person or to
31 property, if a motion for summary judgment was granted on the
32 basis that the defendant was without fault, no other defendant
33 during trial, over plaintiff's objection, may attempt to attribute
34 fault to or comment on the absence or involvement of the defendant
35 who was granted the motion.

36 (m) ~~(1)~~—A summary judgment entered under this section is an
37 appealable judgment as in other cases. Upon entry of any order
38 pursuant to this section, except the entry of summary judgment, a
39 party may, within 20 days after service upon him or her of a written
40 notice of entry of the order, petition an appropriate reviewing court

1 for a peremptory writ. If the notice is served by mail, the initial
2 period within which to file the petition shall be increased by five
3 days if the place of address is within the State of California, 10
4 days if the place of address is outside the State of California but
5 within the United States, and 20 days if the place of address is
6 outside the United States. If the notice is served by facsimile
7 transmission, Express Mail, or another method of delivery
8 providing for overnight delivery, the initial period within which
9 to file the petition shall be increased by two court days. The
10 superior court may, for good cause, and prior to the expiration of
11 the initial period, extend the time for one additional period not to
12 exceed 10 days.

13 *(1) A reviewing court shall review a ruling on the admissibility*
14 *of evidence pursuant to this section using a de novo standard of*
15 *review.*

16 *(2) Before a reviewing court affirms an order granting summary*
17 *judgment or summary adjudication on a ground not relied upon*
18 *by the trial court, the reviewing court shall afford the parties an*
19 *opportunity to present their views on the issue by submitting*
20 *supplemental briefs. The supplemental briefing may include an*
21 *argument that additional evidence relating to that ground exists,*
22 *but that the party has not had an adequate opportunity to present*
23 *the evidence or to conduct discovery on the issue. The court may*
24 *reverse or remand based upon the supplemental briefing to allow*
25 *the parties to present additional evidence or to conduct discovery*
26 *on the issue. If the court fails to allow supplemental briefing, a*
27 *rehearing shall be ordered upon timely petition of any party.*

28 *(n) (1) If a motion for summary adjudication is granted, at the*
29 *trial of the action, the cause or causes of action within the action,*
30 *affirmative defense or defenses, claim for damages, or issue or*
31 *issues of duty as to the motion which has been granted shall be*
32 *deemed to be established and the action shall proceed as to the*
33 *cause or causes of action, affirmative defense or defenses, claim*
34 *for damages, or issue or issues of duty remaining.*

35 *(2) In the trial of the action, the fact that a motion for summary*
36 *adjudication is granted as to one or more causes of action,*
37 *affirmative defenses, claims for damages, or issues of duty within*
38 *the action shall not operate to bar any cause of action, affirmative*
39 *defense, claim for damages, or issue of duty as to which summary*
40 *adjudication was either not sought or denied.*

1 (3) In the trial of an action, neither a party, nor a witness, nor
2 the court shall comment upon the grant or denial of a motion for
3 summary adjudication to a jury.

4 (o) A cause of action has no merit if either of the following
5 exists:

6 (1) One or more of the elements of the cause of action cannot
7 be separately established, even if that element is separately pleaded.

8 (2) A defendant establishes an affirmative defense to that cause
9 of action.

10 (p) For purposes of motions for summary judgment and
11 summary adjudication:

12 (1) A plaintiff or cross-complainant has met his or her burden
13 of showing that there is no defense to a cause of action if that party
14 has proved each element of the cause of action entitling the party
15 to judgment on that cause of action. Once the plaintiff or
16 cross-complainant has met that burden, the burden shifts to the
17 defendant or cross-defendant to show that a triable issue of one or
18 more material facts exists as to that cause of action or a defense
19 thereto. The defendant or cross-defendant may not rely upon the
20 mere allegations or denials of its pleadings to show that a triable
21 issue of material fact exists but, instead, shall set forth the specific
22 facts showing that a triable issue of material fact exists as to that
23 cause of action or a defense thereto.

24 (2) A defendant or cross-defendant has met his or her burden
25 of showing that a cause of action has no merit if that party has
26 shown that one or more elements of the cause of action, even if
27 not separately pleaded, cannot be established, or that there is a
28 complete defense to that cause of action. Once the defendant or
29 cross-defendant has met that burden, the burden shifts to the
30 plaintiff or cross-complainant to show that a triable issue of one
31 or more material facts exists as to that cause of action or a defense
32 thereto. The plaintiff or cross-complainant may not rely upon the
33 mere allegations or denials of its pleadings to show that a triable
34 issue of material fact exists but, instead, shall set forth the specific
35 facts showing that a triable issue of material fact exists as to that
36 cause of action or a defense thereto.

37 (q) This section does not extend the period for trial provided by
38 Section 1170.5.

- 1 (r) Subdivisions (a) and (b) do not apply to actions brought
- 2 pursuant to Chapter 4 (commencing with Section 1159) of Title 3
- 3 of Part 3.
- 4 (s) For the purposes of this section, a change in law does not
- 5 include a later enacted statute without retroactive application.
- 6 (t) This section shall become operative on January 1, 2015.

O