

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1141

Introduced by Assembly Member Chau

February 27, 2015

An act to amend Sections 437c and 998 of, ~~and to repeal Section 630.12 of,~~ the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1141, as amended, Chau. Civil actions.

(1) 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 it and to move for summary adjudication as to certain issues in the action or proceeding. Existing law provides that a motion for summary adjudication shall be granted only if it completely disposes of a cause of action, affirmative defense, claim for damages, or issue of duty.

This bill would allow a motion for summary adjudication that does not completely dispose of a cause of action, affirmative defense, or issue of duty if the parties whose claims or defenses are put at issue by the motion jointly stipulate as to the issue or issues to be adjudicated and declare that a ruling on the motion would further the interest of judicial economy, and if the court grants the motion, having considered any timely objections made by nonstipulating parties. This bill would also prescribe the contents of, and signatories to, the notice of motion, among other provisions.

~~(2) Existing law, operative until January 1, 2016, establishes procedures for conducting expedited jury trials in civil cases where the parties sign a consent order to stipulate that those procedures apply,~~

including provisions for a jury of 8 or fewer members, with no alternates, a limit of 3 peremptory challenges for each side, and a limit of 3 hours for each side to present its case. Existing law provides that all parties waive all rights to appeal and to move for a directed verdict or to make any posttrial motions, except as provided.

~~This bill would delete that repeal date, thereby extending the operation of these provisions indefinitely.~~

(3)

(2) Existing law permits a party to serve an offer in writing upon any other party to an action prior to commencement of trial or arbitration to allow judgment to be taken or an award to be entered in accordance with agreed upon terms and conditions. Existing law provides that if an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award, the court or arbitrator may require the defendant to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, as specified.

This bill would instead require the defendant to pay a reasonable sum to cover expert witness costs whether or not the costs arose postoffer.

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 is
2 amended to read:

3 437c. (a) (1) Any party may move for summary judgment in
4 any action or proceeding if it is contended that the action has no
5 merit or that there is no defense to the action or proceeding. The
6 motion may be made at any time after 60 days have elapsed since
7 the general appearance in the action or proceeding of each party
8 against whom the motion is directed or at any earlier time after
9 the general appearance that the court, with or without notice and
10 upon good cause shown, may direct.

11 (2) Notice of the motion and supporting papers shall be served
12 on all other parties to the action at least 75 days before the time
13 appointed for hearing. However, if the notice is served by mail,
14 the required 75-day period of notice shall be increased by five days
15 if the place of address is within the State of California, 10 days if
16 the place of address is outside the State of California but within
17 the United States, and 20 days if the place of address is outside

1 the United States, and if the notice is served by facsimile
2 transmission, ~~Express Mail~~, *express mail*, or another method of
3 delivery providing for overnight delivery, the required 75-day
4 period of notice shall be increased by two court days.

5 (3) The motion shall be heard no later than 30 days before the
6 date of trial, unless the court for good cause orders otherwise. The
7 filing of the motion shall not extend the time within which a party
8 must otherwise file a responsive pleading.

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

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

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

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

38 (5) Evidentiary objections not made at the hearing shall be
39 deemed waived.

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

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

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

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

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

38 (f) (1) A party may move for summary adjudication as to one
39 or more causes of action within an action, one or more affirmative
40 defenses, one or more claims for damages, or one or more issues

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

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

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

34 (h) If it appears from the affidavits submitted in opposition to
35 a motion for summary judgment or summary adjudication or both
36 that facts essential to justify opposition may exist but cannot, for
37 reasons stated, then be presented, the court shall deny the motion,
38 or order a continuance to permit affidavits to be obtained or
39 discovery to be had or may make any other order as may be just.
40 The application to continue the motion to obtain necessary

1 discovery may also be made by ex parte motion at any time on or
2 before the date the opposition response to the motion is due.

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

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

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

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

31 (m) (1) A summary judgment entered under this section is an
32 appealable judgment as in other cases. Upon entry of any order
33 pursuant to this section, except the entry of summary judgment, a
34 party may, within 20 days after service upon him or her of a written
35 notice of entry of the order, petition an appropriate reviewing court
36 for a peremptory writ. If the notice is served by mail, the initial
37 period within which to file the petition shall be increased by five
38 days if the place of address is within the State of California, 10
39 days if the place of address is outside the State of California but
40 within the United States, and 20 days if the place of address is

1 outside the United States. If the notice is served by facsimile
2 transmission, ~~Express Mail~~, *express mail*, or another method of
3 delivery providing for overnight delivery, the initial period within
4 which to file the petition shall be increased by two court days. The
5 superior court may, for good cause, and prior to the expiration of
6 the initial period, extend the time for one additional period not to
7 exceed 10 days.

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

20 (n) (1) If a motion for summary adjudication is granted, at the
21 trial of the action, the cause or causes of action within the action,
22 affirmative defense or defenses, claim for damages, or issue or
23 issues of duty as to the motion which has been granted shall be
24 deemed to be established and the action shall proceed as to the
25 cause or causes of action, affirmative defense or defenses, claim
26 for damages, or issue or issues of duty remaining.

27 (2) In the trial of the action, the fact that a motion for summary
28 adjudication is granted as to one or more causes of action,
29 affirmative defenses, claims for damages, or issues of duty within
30 the action shall not operate to bar any cause of action, affirmative
31 defense, claim for damages, or issue of duty as to which summary
32 adjudication was either not sought or denied.

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

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

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

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

3 (p) For purposes of motions for summary judgment and
4 summary adjudication:

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

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

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

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

35 (s) Notwithstanding subdivision (f), a party may move for
36 summary adjudication of a legal issue or a claim for damages other
37 than punitive damages that does not completely dispose of a cause
38 of action, affirmative defense, or issue of duty pursuant to this
39 subdivision.

1 (1) (A) Before filing a motion pursuant to this subdivision, the
2 parties whose claims or defenses are put at issue by the motion
3 shall submit to the court both of the following:

4 (i) A joint stipulation stating the issue or issues to be
5 adjudicated.

6 (ii) A declaration from each stipulating party that the motion
7 will further the interest of judicial economy by decreasing trial
8 time or significantly increasing the likelihood of settlement.

9 (B) The joint stipulation shall be served on any party to the civil
10 action who is not also a party to the motion.

11 (2) Within 15 days of receipt of the stipulation and declarations,
12 unless the court has good cause for extending the time, the court
13 shall notify the stipulating parties as to whether the motion may
14 be filed. In making this determination, the court may consider
15 objections by a nonstipulating party made ~~with~~ *within* 10 days of
16 the submission of the stipulation.

17 (3) If the court elects not to allow the filing of the motion, the
18 stipulating parties may request, and upon request the court shall
19 conduct, an informal conference with the stipulating parties to
20 permit further evaluation of the proposed stipulation; however,
21 the stipulating parties shall not file additional papers in support of
22 the motion.

23 (4) (A) A motion for summary adjudication made pursuant to
24 this subdivision shall contain a statement in the notice of motion
25 that reads substantially similar to the following: “This motion is
26 made pursuant to subdivision (s) of Section 437c of the Code of
27 Civil Procedure. The parties to this motion stipulate that the court
28 shall hear this motion and that the resolution of this motion will
29 further the interest of judicial economy by decreasing trial time or
30 significantly increasing the likelihood of settlement.”

31 (B) The notice of motion shall be signed by counsel for all
32 parties, and by those parties in propria persona, to the motion.

33 (5) A motion filed pursuant to this subdivision may be made by
34 itself or as an alternative to a motion for summary judgment and
35 shall proceed in all procedural respects as a motion for summary
36 judgment.

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

39 ~~SEC. 2. Section 630.12 of the Code of Civil Procedure is~~
40 ~~repealed.~~

1 ~~SEC. 3.~~

2 SEC. 2. Section 998 of the Code of Civil Procedure is amended
3 to read:

4 998. (a) The costs allowed under Sections 1031 and 1032 shall
5 be withheld or augmented as provided in this section.

6 (b) Not less than 10 days prior to commencement of trial or
7 arbitration (as provided in Section 1281 or 1295) of a dispute to
8 be resolved by arbitration, any party may serve an offer in writing
9 upon any other party to the action to allow judgment to be taken
10 or an award to be entered in accordance with the terms and
11 conditions stated at that time. The written offer shall include a
12 statement of the offer, containing the terms and conditions of the
13 judgment or award, and a provision that allows the accepting party
14 to indicate acceptance of the offer by signing a statement that the
15 offer is accepted. Any acceptance of the offer, whether made on
16 the document containing the offer or on a separate document of
17 acceptance, shall be in writing and shall be signed by counsel for
18 the accepting party or, if not represented by counsel, by the
19 accepting party.

20 (1) If the offer is accepted, the offer with proof of acceptance
21 shall be filed and the clerk or the judge shall enter judgment
22 accordingly. In the case of an arbitration, the offer with proof of
23 acceptance shall be filed with the arbitrator or arbitrators who shall
24 promptly render an award accordingly.

25 (2) If the offer is not accepted prior to trial or arbitration or
26 within 30 days after it is made, whichever occurs first, it shall be
27 deemed withdrawn, and cannot be given in evidence upon the trial
28 or arbitration.

29 (3) For purposes of this subdivision, a trial or arbitration shall
30 be deemed to be actually commenced at the beginning of the
31 opening statement of the plaintiff or counsel, ~~and or~~; if there is no
32 opening statement, ~~then~~ at the time of the administering of the oath
33 or affirmation to the first witness, or the introduction of any
34 evidence.

35 (c) (1) If an offer made by a defendant is not accepted and the
36 plaintiff fails to obtain a more favorable judgment or award, the
37 plaintiff shall not recover his or her postoffer costs and shall pay
38 the defendant's costs from the time of the offer. In addition, in any
39 action or proceeding other than an eminent domain action, the
40 court or arbitrator, in its discretion, may require the plaintiff to

1 pay a reasonable sum to cover costs of the services of expert
2 witnesses, who are not regular employees of any party, actually
3 incurred and reasonably necessary in either, or both, preparation
4 for trial or arbitration, or during trial or arbitration, of the case by
5 the defendant.

6 (2) (A) In determining whether the plaintiff obtains a more
7 favorable judgment, the court or arbitrator shall exclude the
8 postoffer costs.

9 (B) It is the intent of the Legislature in enacting subparagraph
10 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,
11 209 Cal.App.3d 996, that attorney’s fees awarded to the prevailing
12 party were not costs for purposes of this section but were part of
13 the judgment.

14 (d) If an offer made by a plaintiff is not accepted and the
15 defendant fails to obtain a more favorable judgment or award in
16 any action or proceeding other than an eminent domain action, the
17 court or arbitrator, in its discretion, may require the defendant to
18 pay a reasonable sum to cover costs of the services of expert
19 witnesses, who are not regular employees of any party, actually
20 incurred and reasonably necessary in either, or both, preparation
21 for trial or arbitration, or during trial or arbitration, of the case by
22 the plaintiff, in addition to plaintiff’s costs.

23 (e) If an offer made by a defendant is not accepted and the
24 plaintiff fails to obtain a more favorable judgment or award, the
25 costs under this section, from the time of the offer, shall be
26 deducted from any damages awarded in favor of the plaintiff. If
27 the costs awarded under this section exceed the amount of the
28 damages awarded to the plaintiff the net amount shall be awarded
29 to the defendant and judgment or award shall be entered
30 accordingly.

31 (f) Police officers shall be deemed to be expert witnesses for
32 the purposes of this section. For purposes of this section, “plaintiff”
33 includes a cross-complainant and “defendant” includes a
34 cross-defendant. Any judgment or award entered pursuant to this
35 section shall be deemed to be a compromise settlement.

36 (g) This chapter does not apply to either of the following:

37 (1) An offer that is made by a plaintiff in an eminent domain
38 action.

1 (2) Any enforcement action brought in the name of the people
2 of the State of California by the Attorney General, a district
3 attorney, or a city attorney, acting as a public prosecutor.

4 (h) The costs for services of expert witnesses for trial under
5 subdivisions (c) and (d) shall not exceed those specified in Section
6 68092.5 of the Government Code.

7 (i) This section shall not apply to labor arbitrations filed pursuant
8 to memoranda of understanding under the Ralph C. Dills Act
9 (Chapter 10.3 (commencing with Section 3512) of Division 4 of
10 Title 1 of the Government Code).