

AMENDED IN SENATE JUNE 3, 2015

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1141**

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**Introduced by Assembly Member Chau**

February 27, 2015

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An act to amend Sections 437c and 998 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. *economy*. This bill would also prescribe the contents of, and signatories to, the notice of motion, among other provisions.

(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~~ *defendant* is not accepted and the ~~defendant~~ *plaintiff* fails to obtain a more favorable judgment or award, the court or arbitrator may require the ~~defendant~~ *plaintiff* 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~~ *clarify that this provision requires a plaintiff to cover only expert witness costs whether or not the costs that 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  
18 the United States, and if the notice is served by facsimile  
19 transmission, express mail, or another method of delivery providing  
20 for overnight delivery, the required 75-day period of notice shall  
21 be increased by two court days.

22 (3) The motion shall be heard no later than 30 days before the  
23 date of trial, unless the court for good cause orders otherwise. The

1 filing of the motion shall not extend the time within which a party  
2 must otherwise file a responsive pleading.

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

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

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

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

32 (5) Evidentiary objections not made at the hearing shall be  
33 deemed waived.

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

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

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

13 (d) Supporting and opposing affidavits or declarations shall be  
14 made by any person on personal knowledge, shall set forth  
15 admissible evidence, and shall show affirmatively that the affiant  
16 is competent to testify to the matters stated in the affidavits or  
17 declarations. Any objections based on the failure to comply with  
18 the requirements of this subdivision shall be made at the hearing  
19 or shall be deemed waived.

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

31 (f) (1) A party may move for summary adjudication as to one  
32 or more causes of action within an action, one or more affirmative  
33 defenses, one or more claims for damages, or one or more issues  
34 of duty, if that party contends that the cause of action has no merit  
35 or that there is no affirmative defense thereto, or that there is no  
36 merit to an affirmative defense as to any cause of action, or both,  
37 or that there is no merit to a claim for damages, as specified in  
38 Section 3294 of the Civil Code, or that one or more defendants  
39 either owed or did not owe a duty to the plaintiff or plaintiffs. A  
40 motion for summary adjudication shall be granted only if it

1 completely disposes of a cause of action, an affirmative defense,  
2 a claim for damages, or an issue of duty.

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

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

27 (h) If it appears from the affidavits submitted in opposition to  
28 a motion for summary judgment or summary adjudication or both  
29 that facts essential to justify opposition may exist but cannot, for  
30 reasons stated, then be presented, the court shall deny the motion,  
31 or order a continuance to permit affidavits to be obtained or  
32 discovery to be had or may make any other order as may be just.  
33 The application to continue the motion to obtain necessary  
34 discovery may also be made by ex parte motion at any time on or  
35 before the date the opposition response to the motion is due.

36 (i) If, after granting a continuance to allow specified additional  
37 discovery, the court determines that the party seeking summary  
38 judgment has unreasonably failed to allow the discovery to be  
39 conducted, the court shall grant a continuance to permit the  
40 discovery to go forward or deny the motion for summary judgment

1 or summary adjudication. This section does not affect or limit the  
2 ability of any party to compel discovery under the Civil Discovery  
3 Act (Title 4 (commencing with Section 2016.010) of Part 4).

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

12 (k) Except when a separate judgment may properly be awarded  
13 in the action, no final judgment may be entered on a motion for  
14 summary judgment prior to the termination of the action, but the  
15 final judgment shall, in addition to any matters determined in the  
16 action, award judgment as established by the summary proceeding  
17 herein provided for.

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

24 (m) (1) A summary judgment entered under this section is an  
25 appealable judgment as in other cases. Upon entry of any order  
26 pursuant to this section, except the entry of summary judgment, a  
27 party may, within 20 days after service upon him or her of a written  
28 notice of entry of the order, petition an appropriate reviewing court  
29 for a peremptory writ. If the notice is served by mail, the initial  
30 period within which to file the petition shall be increased by five  
31 days if the place of address is within the State of California, 10  
32 days if the place of address is outside the State of California but  
33 within the United States, and 20 days if the place of address is  
34 outside the United States. If the notice is served by facsimile  
35 transmission, express mail, or another method of delivery providing  
36 for overnight delivery, the initial period within which to file the  
37 petition shall be increased by two court days. The superior court  
38 may, for good cause, and prior to the expiration of the initial period,  
39 extend the time for one additional period not to exceed 10 days.

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

13 (n) (1) If a motion for summary adjudication is granted, at the  
14 trial of the action, the cause or causes of action within the action,  
15 affirmative defense or defenses, claim for damages, or issue or  
16 issues of duty as to the motion which has been granted shall be  
17 deemed to be established and the action shall proceed as to the  
18 cause or causes of action, affirmative defense or defenses, claim  
19 for damages, or issue or issues of duty remaining.

20 (2) In the trial of the action, the fact that a motion for summary  
21 adjudication is granted as to one or more causes of action,  
22 affirmative defenses, claims for damages, or issues of duty within  
23 the action shall not operate to bar any cause of action, affirmative  
24 defense, claim for damages, or issue of duty as to which summary  
25 adjudication was either not sought or denied.

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

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

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

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

35 (p) For purposes of motions for summary judgment and  
36 summary adjudication:

37 (1) A plaintiff or cross-complainant has met his or her burden  
38 of showing that there is no defense to a cause of action if that party  
39 has proved each element of the cause of action entitling the party  
40 to judgment on that cause of action. Once the plaintiff or

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

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

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

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

27 (s) Notwithstanding subdivision (f), a party may move for  
28 summary adjudication of a legal issue or a claim for damages other  
29 than punitive damages that does not completely dispose of a cause  
30 of action, affirmative defense, or issue of duty pursuant to this  
31 subdivision.

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

35 (i) A joint stipulation stating the issue or issues to be  
36 adjudicated.

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

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

3 (2) Within 15 days of receipt of the stipulation and declarations,  
4 unless the court has good cause for extending the time, the court  
5 shall notify the stipulating parties as to whether the motion may  
6 be filed. In making this determination, the court may consider  
7 objections by a nonstipulating party made within 10 days of the  
8 submission of the stipulation.

9 (3) If the court elects not to allow the filing of the motion, the  
10 stipulating parties may request, and upon request the court shall  
11 conduct, an informal conference with the stipulating parties to  
12 permit further evaluation of the proposed stipulation; however,  
13 the stipulating parties shall not file additional papers in support of  
14 the motion.

15 (4) (A) A motion for summary adjudication made pursuant to  
16 this subdivision shall contain a statement in the notice of motion  
17 that reads substantially similar to the following: “This motion is  
18 made pursuant to subdivision (s) of Section 437c of the Code of  
19 Civil Procedure. The parties to this motion stipulate that the court  
20 shall hear this motion and that the resolution of this motion will  
21 further the interest of judicial economy by decreasing trial time or  
22 significantly increasing the likelihood of settlement.”

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

25 (5) A motion filed pursuant to this subdivision may be made by  
26 itself or as an alternative to a motion for summary judgment and  
27 shall proceed in all procedural respects as a motion for summary  
28 judgment.

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

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

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

35 (b) Not less than 10 days prior to commencement of trial or  
36 arbitration (as provided in Section 1281 or 1295) of a dispute to  
37 be resolved by arbitration, any party may serve an offer in writing  
38 upon any other party to the action to allow judgment to be taken  
39 or an award to be entered in accordance with the terms and  
40 conditions stated at that time. The written offer shall include a

1 statement of the offer, containing the terms and conditions of the  
2 judgment or award, and a provision that allows the accepting party  
3 to indicate acceptance of the offer by signing a statement that the  
4 offer is accepted. Any acceptance of the offer, whether made on  
5 the document containing the offer or on a separate document of  
6 acceptance, shall be in writing and shall be signed by counsel for  
7 the accepting party or, if not represented by counsel, by the  
8 accepting party.

9 (1) If the offer is accepted, the offer with proof of acceptance  
10 shall be filed and the clerk or the judge shall enter judgment  
11 accordingly. In the case of an arbitration, the offer with proof of  
12 acceptance shall be filed with the arbitrator or arbitrators who shall  
13 promptly render an award accordingly.

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

18 (3) For purposes of this subdivision, a trial or arbitration shall  
19 be deemed to be actually commenced at the beginning of the  
20 opening statement of the plaintiff or counsel, or, if there is no  
21 opening statement, at the time of the administering of the oath or  
22 affirmation to the first witness, or the introduction of any evidence.

23 (c) (1) 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 plaintiff shall not recover his or her postoffer costs and shall pay  
26 the defendant's costs from the time of the offer. In addition, in any  
27 action or proceeding other than an eminent domain action, the  
28 court or arbitrator, in its discretion, may require the plaintiff to  
29 pay a reasonable sum to cover *postoffer* costs of the services of  
30 expert witnesses, who are not regular employees of any party,  
31 actually incurred and reasonably necessary in either, or both,  
32 preparation for trial or arbitration, or during trial or arbitration, of  
33 the case by the defendant.

34 (2) (A) In determining whether the plaintiff obtains a more  
35 favorable judgment, the court or arbitrator shall exclude the  
36 postoffer costs.

37 (B) It is the intent of the Legislature in enacting subparagraph  
38 (A) to supersede the holding in *Encinitas Plaza Real v. Knight*,  
39 209 Cal.App.3d 996, that attorney's fees awarded to the prevailing

1 party were not costs for purposes of this section but were part of  
2 the judgment.

3 (d) If an offer made by a plaintiff is not accepted and the  
4 defendant fails to obtain a more favorable judgment or award in  
5 any action or proceeding other than an eminent domain action, the  
6 court or arbitrator, in its discretion, may require the defendant to  
7 pay a reasonable sum to cover *postoffer* costs of the services of  
8 expert witnesses, who are not regular employees of any party,  
9 actually incurred and reasonably necessary in either, or both,  
10 preparation for trial or arbitration, or during trial or arbitration, of  
11 the case by the plaintiff, in addition to plaintiff's costs.

12 (e) If an offer made by a defendant is not accepted and the  
13 plaintiff fails to obtain a more favorable judgment or award, the  
14 costs under this section, from the time of the offer, shall be  
15 deducted from any damages awarded in favor of the plaintiff. If  
16 the costs awarded under this section exceed the amount of the  
17 damages awarded to the plaintiff the net amount shall be awarded  
18 to the defendant and judgment or award shall be entered  
19 accordingly.

20 (f) Police officers shall be deemed to be expert witnesses for  
21 the purposes of this section. For purposes of this section, "plaintiff"  
22 includes a cross-complainant and "defendant" includes a  
23 cross-defendant. Any judgment or award entered pursuant to this  
24 section shall be deemed to be a compromise settlement.

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

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

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

31 (h) The costs for services of expert witnesses for trial under  
32 subdivisions (c) and (d) shall not exceed those specified in Section  
33 68092.5 of the Government Code.

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

O