

AMENDED IN ASSEMBLY JULY 9, 2015

AMENDED IN ASSEMBLY MAY 28, 2015

AMENDED IN SENATE APRIL 22, 2015

**SENATE BILL**

**No. 470**

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**Introduced by Senator Jackson**

February 25, 2015

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An act to amend Section 437c of the Code of Civil Procedure, relating to civil actions.

LEGISLATIVE COUNSEL'S DIGEST

SB 470, as amended, Jackson. Civil actions: summary judgment and summary adjudication.

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 requires the court to grant a motion for summary judgment if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law, and to grant a motion for summary adjudication if the papers submitted show that there is no triable *issue* as to one or more material facts the adjudication of which will completely dispose of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. In determining whether the papers show that there is no triable issue as to a material fact, existing law requires the court to consider all of the evidence set forth in the papers, except evidence to which objections have been made and sustained by the court.

This bill would provide that, in granting or denying a motion for summary judgment or summary adjudication, the court need rule only on objections made to evidence that the court deems material to the disposition of the motion. The bill would also provide that objections to evidence not ruled on for purposes of the motion would be preserved for appellate review.

The bill would also make nonsubstantive changes to the provisions.

*This bill would incorporate additional changes to Section 437c of the Code of Civil Procedure proposed by AB 1141 that would become operative only if AB 1141 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.*

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

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

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

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

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

30 (5) Evidentiary objections not made at the hearing shall be  
31 deemed waived.

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

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

39 (c) The motion for summary judgment shall be granted if all  
40 the papers submitted show that there is no triable issue as to any

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

11 (d) Supporting and opposing affidavits or declarations shall be  
12 made by a person on personal knowledge, shall set forth admissible  
13 evidence, and shall show affirmatively that the affiant is competent  
14 to testify to the matters stated in the affidavits or declarations. An  
15 objection based on the failure to comply with the requirements of  
16 this subdivision, if not made at the hearing, shall be deemed  
17 waived.

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

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

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

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

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

34 (i) If, after granting a continuance to allow specified additional  
35 discovery, the court determines that the party seeking summary  
36 judgment has unreasonably failed to allow the discovery to be  
37 conducted, the court shall grant a continuance to permit the  
38 discovery to go forward or deny the motion for summary judgment  
39 or summary adjudication. This section does not affect or limit the

1 ability of a party to compel discovery under the Civil Discovery  
2 Act (Title 4 (commencing with Section 2016.010) of Part 4).

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

11 (k) Unless a separate judgment may properly be awarded in the  
12 action, a final judgment shall not be entered on a motion for  
13 summary judgment before the termination of the action, but the  
14 final judgment shall, in addition to any matters determined in the  
15 action, award judgment as established by the summary proceeding  
16 herein provided for.

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

23 (m) (1) A summary judgment entered under this section is an  
24 appealable judgment as in other cases. Upon entry of an order  
25 pursuant to this section, except the entry of summary judgment, a  
26 party may, within 20 days after service upon him or her of a written  
27 notice of entry of the order, petition an appropriate reviewing court  
28 for a peremptory writ. If the notice is served by mail, the initial  
29 period within which to file the petition shall be increased by five  
30 days if the place of address is within the State of California, 10  
31 days if the place of address is outside the State of California but  
32 within the United States, and 20 days if the place of address is  
33 outside the United States. If the notice is served by facsimile  
34 transmission, Express Mail, or another method of delivery  
35 providing for overnight delivery, the initial period within which  
36 to file the petition shall be increased by two court days. The  
37 superior court may, for good cause, and prior to the expiration of  
38 the initial period, extend the time for one additional period not to  
39 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 a 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, a witness, nor the  
27 court shall comment to a jury upon the grant or denial of a motion  
28 for summary adjudication.

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 shall 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 shall 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) In granting or denying a motion for summary judgment or  
23 summary adjudication, the court need rule only on those objections  
24 to evidence that it deems material to its disposition of the motion.  
25 Objections to evidence that are not ruled on for purposes of the  
26 motion shall be preserved for appellate review.

27 (r) This section does not extend the period for trial provided by  
28 Section 1170.5.

29 (s) Subdivisions (a) and (b) do not apply to actions brought  
30 pursuant to Chapter 4 (commencing with Section 1159) of Title 3  
31 of Part 3.

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

34 *SEC. 1.5. Section 437c of the Code of Civil Procedure is*  
35 *amended to read:*

36 *437c. (a) (1) A party may move for summary judgment in any*  
37 *action or proceeding if it is contended that the action has no merit*  
38 *or that there is no defense to the action or proceeding. The motion*  
39 *may be made at any time after 60 days have elapsed since the*  
40 *general appearance in the action or proceeding of each party*



1 *against whom the motion is directed or at any earlier time after*  
2 *the general appearance that the court, with or without notice and*  
3 *upon good cause shown, may direct.*

4 ~~(a) Any party may move for summary judgment in any action~~  
5 ~~or proceeding if it is contended that the action has no merit or that~~  
6 ~~there is no defense to the action or proceeding. The motion may~~  
7 ~~be made at any time after 60 days have elapsed since the general~~  
8 ~~appearance in the action or proceeding of each party against whom~~  
9 ~~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~~

12 (2) *Notice of the motion and supporting papers shall be served*  
13 *on all other parties to the action at least 75 days before the time*  
14 *appointed for hearing. However, if the notice is served by mail,*  
15 *the required 75-day period of notice shall be increased by five 5*  
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, and if the notice is served by facsimile*  
20 *transmission, Express Mail, express mail, or another method of*  
21 *delivery providing for overnight delivery, the required 75-day*  
22 *period of notice shall be increased by two court days. The motion*  
23 *shall be heard no later than 30 days before the date of trial, unless*  
24 *the court for good cause orders otherwise. The filing of the motion*  
25 *shall not extend the time within which a party must otherwise file*  
26 *a responsive pleading.*

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

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

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

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

17 (4) ~~Any~~A reply to the opposition shall be served and filed by  
18 the moving party not less than five days preceding the noticed or  
19 continued date of hearing, unless the court for good cause orders  
20 otherwise.

21 (5) Evidentiary objections not made at the hearing shall be  
22 deemed waived.

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

27 (7) ~~Any~~A incorporation by reference of a matter in the court’s  
28 file shall set forth with specificity the exact matter to which  
29 reference is being made and shall not incorporate the entire file.

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

1 contradicted by other inferences or ~~evidence, which~~ *evidence that*  
2 raise a triable issue as to any material fact.

3 (d) Supporting and opposing affidavits or declarations shall be  
4 made by ~~any~~ *a* person on personal knowledge, shall set forth  
5 admissible evidence, and shall show affirmatively that the affiant  
6 is competent to testify to the matters stated in the affidavits or  
7 declarations. ~~Any objections~~ *An objection* based on the failure to  
8 comply with the requirements of this ~~subdivision shall be~~  
9 *subdivision, if not* made at the ~~hearing or hearing~~, shall be deemed  
10 waived.

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

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

34 (2) A motion for summary adjudication may be made by itself  
35 or as an alternative to a motion for summary judgment and shall  
36 proceed in all procedural respects as a motion for summary  
37 judgment. However, a party may not move for summary judgment  
38 based on issues asserted in a prior motion for summary adjudication  
39 and denied by the ~~court,~~ *court* unless that party establishes, to the  
40 satisfaction of the court, newly discovered facts or circumstances

1 or a change of law supporting the issues reasserted in the summary  
2 judgment motion.

3 (g) Upon the denial of a motion for summary ~~judgment,~~  
4 *judgment* on the ground that there is a triable issue as to one or  
5 more material facts, the court shall, by written or oral order, specify  
6 one or more material facts raised by the motion as to which the  
7 court has determined there exists a triable controversy. This  
8 determination shall specifically refer to the evidence proffered in  
9 support of and in opposition to the motion ~~which~~ *that* indicates  
10 that a triable controversy exists. Upon the grant of a motion for  
11 summary ~~judgment,~~ *judgment* on the ground that there is no triable  
12 issue of material fact, the court shall, by written or oral order,  
13 specify the reasons for its determination. The order shall  
14 specifically refer to the evidence proffered in support ~~of,~~ *and of*  
15 *and*, if applicable, in opposition ~~to,~~ *to* the motion which indicates  
16 that no triable issue exists. The court shall also state its reasons  
17 for any other determination. The court shall record its determination  
18 by court reporter or written order.

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

28 (i) If, after granting a continuance to allow specified additional  
29 discovery, the court determines that the party seeking summary  
30 judgment has unreasonably failed to allow the discovery to be  
31 conducted, the court shall grant a continuance to permit the  
32 discovery to go forward or deny the motion for summary judgment  
33 or summary adjudication. This section does not affect or limit the  
34 ability of ~~any~~ *a* party to compel discovery under the Civil  
35 Discovery Act (Title 4 (commencing with Section 2016.010) of  
36 Part 4).

37 (j) If the court determines at any time that ~~any of the affidavits~~  
38 ~~are an affidavit~~ *was* presented in bad faith or solely for ~~purposes~~  
39 *the purpose* of delay, the court shall order the party ~~presenting~~ *who*  
40 *presented the affidavits* *affidavit* to pay the other party the amount

1 of the reasonable expenses ~~which~~ *that* the filing of the affidavits  
2 *affidavit* caused the other party to incur. Sanctions ~~may~~ *shall* not  
3 be imposed pursuant to this ~~subdivision~~, *subdivision* except on  
4 notice contained in a party's ~~papers~~, *papers* or on the court's own  
5 noticed motion, and after an opportunity to be heard.

6 (k) ~~Except when~~ *Unless* a separate judgment may properly be  
7 awarded in the action, ~~no~~ *a* final judgment ~~may~~ *shall not* be entered  
8 on a motion for summary judgment ~~prior to~~ *before* the termination  
9 of the action, but the final judgment shall, in addition to any matters  
10 determined in the action, award judgment as established by the  
11 summary proceeding herein provided for.

12 (l) ~~In actions which arise~~ *an action arising* out of an injury to  
13 the person or to property, if a motion for summary judgment ~~was~~  
14 *is* granted on the basis that the defendant was without fault, no  
15 other defendant during trial, over plaintiff's objection, may attempt  
16 to attribute fault to or comment on the absence or involvement of  
17 the defendant who was granted the motion.

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

35 (2) Before a reviewing court affirms an order granting summary  
36 judgment or summary adjudication on a ground not relied upon  
37 by the trial court, the reviewing court shall afford the parties an  
38 opportunity to present their views on the issue by submitting  
39 supplemental briefs. The supplemental briefing may include an  
40 argument that additional evidence relating to that ground exists,

1 but that the party has not had an adequate opportunity to present  
2 the evidence or to conduct discovery on the issue. The court may  
3 reverse or remand based upon the supplemental briefing to allow  
4 the parties to present additional evidence or to conduct discovery  
5 on the issue. If the court fails to allow supplemental briefing, a  
6 rehearing shall be ordered upon timely petition of ~~any~~ a party.

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

14 (2) In the trial of the action, the fact that a motion for summary  
15 adjudication is granted as to one or more causes of action,  
16 affirmative defenses, claims for damages, or issues of duty within  
17 the action shall not operate to bar any cause of action, affirmative  
18 defense, claim for damages, or issue of duty as to which summary  
19 adjudication was either not sought or denied.

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

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

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

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

29 (p) For purposes of motions for summary judgment and  
30 summary adjudication:

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

1 facts showing that a triable issue of material fact exists as to that  
2 cause of action or a defense thereto.

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

16 (q) *In granting or denying a motion for summary judgment or*  
17 *summary adjudication, the court need rule only on those objections*  
18 *to evidence that it deems material to its disposition of the motion.*  
19 *Objections to evidence that are not ruled on for purposes of the*  
20 *motion shall be preserved for appellate review.*

21 ~~(r)~~

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

24 ~~(s)~~

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

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

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

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

38 (ii) *A declaration from each stipulating party that the motion*  
39 *will further the interest of judicial economy by decreasing trial*  
40 *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*  
14 *of 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 (t) 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*  
22 *or 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 ~~(s)~~

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

32 ~~(t) This section shall become operative on January 1, 2015.~~

33 *SEC. 2. Section 1.5 of this bill incorporates amendments to*  
34 *Section 437c of the Code of Civil Procedure proposed by both this*  
35 *bill and Assembly Bill 1141. It shall only become operative if (1)*  
36 *both bills are enacted and become effective on or before January*  
37 *1, 2016, (2) each bill amends Section 437c of the Code of Civil*



- 1 *Procedure, and (3) this bill is enacted after Assembly Bill 1141,*
- 2 *in which case Section 1 of this bill shall not become operative.*

O