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Deering's California Codes Annotated  
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(All 2015 legislation)

CODE OF CIVIL PROCEDURE  
Part 2. Of Civil Actions  
Title 6. Of the Pleadings in Civil Actions  
Chapter 4. Motion to Strike

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*Cal Code Civ Proc § 435 (2016)*

**§ 435. Notice of motion to strike complaint or pleading; Extension of time to answer**

(a) As used in this section:

- (1) The term "complaint" includes a cross-complaint.
- (2) The term "pleading" means a demurrer, answer, complaint, or cross-complaint.

(b)

(1) Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof, but this time limitation shall not apply to motions specified in subdivision (e).

(2) A notice of motion to strike the answer or the complaint, or a portion thereof, shall specify a hearing date set in accordance with Section 1005.

(3) A notice of motion to strike a demurrer, or a portion thereof, shall set the hearing thereon concurrently with the hearing on the demurrer.

(c) If a party serves and files a notice of motion to strike without demurring to the complaint, the time to answer is extended and no default may be entered against that defendant, except as provided in Sections 585 and 586.

(d) The filing of a notice of motion to strike an answer or complaint, or portion thereof, shall not extend the time within which to demur.

(e) A motion to strike, as specified in this section, may be made as part of a motion pursuant to subparagraph (A) of paragraph (1) of subdivision (i) of Section 438.

**HISTORY:**

Added Stats 1955 ch 1452 § 3a. Amended Stats 1971 ch 244 § 33, operative July 1, 1972; Stats 1982 ch 704 § 3;

Stats 1993 ch 456 § 3.5 (AB 58).

**NOTES:**

**Amendments:**

**1971 Amendment:**

Substituted the section for the former section which read: "The defendant, within the time required in the summons to answer, either at the time he demurs to the complaint, or without demurring, may serve and file a notice of motion to strike the whole or any part of the complaint. The notice of motion to strike shall specify a hearing date not more than 15 days from the filing of said notice, plus any additional time that the defendant, as moving party, is otherwise required to give the plaintiff. If defendant serves and files such a notice of motion without demurring, his time to answer the complaint shall be extended and no default may be entered against him, except as provided in Sections 585 and 586, but the filing of such a notice of motion shall not extend the time within which to demur."

**1982 Amendment:**

Substituted the section for the former section which read: "(a) As used in this section, 'complaint' includes a cross-complaint. (b) Any part, within the time he is allowed to answer a complaint, either at the time he demurs to the complaint, or without demurring, may serve and file a notice of motion to strike the whole or any part of the complaint. The notice of motion to strike shall specify a hearing date not more than 15 days from the filing of the notice, plus any additional time that the party, as moving party, is otherwise required to give the other party. If a party serves and files such a notice of motion without demurring, his time to answer the complaint is extended and no default may be entered against him, except as provided in Sections 585 and 586, but the filing of such a notice of motion shall not exceed the time within which to demur."

**1993 Amendment:**

Added (1) ", but this time limitation shall not apply to motions specified in subdivision (e)" in subd (b)(1); and (2) subd (e).

**Historical Derivation:**

Former CCP § 442, as added Code Amdts 1873-74 ch 383 § 54, amended Stats 1907 ch 372 § 6, Stats 1909 ch 629 § 1, Stats 1915 ch 141 § 1, Stats 1923 ch 376 § 1, Stats 1955 ch 1452 § 4, Stats 1957 ch 1498 § 1, Stats 1970 ch 484 § 2.

**Law Revision Commission Comments:**

**1971**

Section 435 is amended to make its provisions specifically applicable to cross-complaints. With respect to a cross-complaint that would have been a cross-complaint under prior law, Section 435 continues prior law under former Code of Civil Procedure Section 442. Section 435 also makes clear that a motion to strike may be directed to a cross-complaint that formerly would have been asserted as a counterclaim in the answer. The prior law was not clear on this point. But see *Code Civ Proc*, § 453 (striking sham or irrelevant answer).

**Cross References:**

Time for demurrer: *CCP* § 430.40.

Court in which motion must be made: *CCP* § 1004.

Notice of motion and time for service: *CCP* § 1005.

Contents and service of notice of motion: *CCP* § 1010.

Methods of service: *CCP* §§ 1011 et seq.

Appearance: *CCP* § 1014.

**Collateral References:**

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 2 "Procedural Guide For Civil Actions"*.

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 26 "Answers"*.

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 206 "Demurrers And Motions For Judgment On The Pleadings"*.

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 375 "Motions To Strike"*.

*Cal. Forms Pleading & Practice (Matthew Bender(R)) ch 425 "Pretrial Proceedings"*.

*Cal. Points & Authorities (Matthew Bender(R)) ch 24 "Attorneys At Law: Substitution Withdrawal Disqualification And Authority To Appear" § 24.38.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 52 "Corporations" § 52.34.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 61 "Cross Complaints" § 61.50.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 64 "Damages: Tort" § 64.60.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 65 "Damages: Contract" § 65.60.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 66 "Death And Survival Actions" § 66.22.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 66 "Death And Survival Actions" § 66.43.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 71 "Demurrers And Motions For Judgment On The Pleadings" § 71.73.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 143 "Limitation Of Actions" § 143.24.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.03.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.07.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.30.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.38.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 160 "Motions To Strike" § 160.60.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 220 "Subrogation" § 220.29.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 220 "Subrogation" § 220.39.*

*Cal. Points & Authorities (Matthew Bender(R)) ch 236 "Unlawful Detainer" § 236.21.*

*Cal. Employment Law (Matthew Bender(R)), § 61.03.*

*Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 92, Petitioning for Dissolution or Legal Separation §§ 92.10, 92.32.*

*Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 93, Responding to the Petition §§ 93.02, 93.05, 93.06.*

*Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 94, Joinder of Parties § 94.02.*

*Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 97, Uncontested Proceedings and Summary Dissolution § 97.02.*

*Cal. Fam. Law Practice & Procedure 2d (Matthew Bender(R)), ch 120, Dismissal of Proceedings § 120.07.*

*Matthew Bender(R) Practice Guide: Cal. Trust Lit., ch 4, Handling Jurisdiction, Venue, Standing, Statute of Limitations, Notice, and Law and Motion Issues, § 4.59[1].*

*Matthew Bender(R) Practice Guide: California Contract Litigation, 7.14, 10.18, 10.21, 23.02, 23.03, 23.09.*

*Matthew Bender(R) Practice Guide: California Pretrial Civil Procedure, 12.03-12.06, 12.08, 12.23, 12.24.*

*5 Witkin Procedure (5th ed) Pleading §§ 1008, 1008, 1009, 1012-1015, 1057, 1058.*

*Cal Jur 3d (Rev) Family Law § 637.*

*Rutter Cal Prac Guide, Civil Procedure Before Trial, §§ 7:156 et seq.*

#### **Forms:**

Suggested forms are set out below, following Notes of Decisions.

#### **Law Review Articles:**

Motion to strike. *43 Cal LR 695*.

Purpose and effect of statute. *29 SCLR 105*.

Pre-trial motions and defensive strategy in California. *3 UCLA LR 72*.

### **Hierarchy Notes:**

Pt. 2 Note

Pt. 2, Tit. 6 Note

Pt. 2, Tit. 6, Ch. 4 Note

NOTES OF DECISIONS 1. Generally 2. Construction with Other Law 3. Applicability 4. Time Limitations 5. Summary Judgment 6. Particular Determinations 7. Appeal and Error

### **1. Generally**

Court is not required to tolerate purported amended complaint that fails to amend previous pleading, is not filed in good faith, is filed in disregard of established procedural requirements, or is otherwise violative of orderly judicial administration. *Tostevin v. Douglas (1958, Cal App 2d Dist) 160 Cal App 2d 321, 325 P2d 130, 1958 Cal App LEXIS 2124*.

By its terms, this section authorizes motion to strike whole of complaint without necessity of filing answer or demurrer. *Lincoln v. Didak (1958, Cal App 2d Dist) 162 Cal App 2d 625, 328 P2d 498, 1958 Cal App LEXIS 1916*.

This section constitutes legislative reaffirmance of inherent right of court to strike or dismiss complaint when it is made to appear by extraneous evidence that it is sham and based on false allegations. *Lincoln v. Didak (1958, Cal App 2d Dist) 162 Cal App 2d 625, 328 P2d 498, 1958 Cal App LEXIS 1916*.

Though this section does not purport to state grounds on which, or manner in which, motion to strike whole of complaint may be made, it is apparent that Legislature must have contemplated that motion might be made for reasons and on grounds not appearing on face of complaint. *Lincoln v. Didak (1958, Cal App 2d Dist) 162 Cal App 2d 625, 328 P2d 498, 1958 Cal App LEXIS 1916*.

### **2. Construction with Other Law**

Filing of motion to strike portions of complaint is not waiver of right to move for change of venue. *Marshall v. Benedict (1958, Cal App 1st Dist) 161 Cal App 2d 284, 326 P2d 516, 1958 Cal App LEXIS 1732*.

### **3. Applicability**

The proper objection where a party fails to verify a pleading is a motion to strike under *CCP § 435*, which provides for timely notice and for hearing and extension of time to answer. *Perlman v. Municipal Court (1979, Cal App 2d Dist) 99 Cal App 3d 568, 160 Cal Rptr 567, 1979 Cal App LEXIS 2356*.

Time frames set forth in *CCP § 435* do not apply to motions under *CCP § 425.16*, which has its own time limitations. Therefore, in addressing the timing of a hearing date on a motion under § 425.16, the reviewing court

commented that defendants could have waited to serve the motion until after they served their answer. *Hoskins v. Hogstad* (2006, Cal App 3d Dist) 136 Cal App 4th 1182, 2006 Cal App LEXIS 213, op. withdrawn, (2006, Cal App 3d Dist) 2006 Cal App LEXIS 278, reh'g denied, (2006) 2006 Cal. App. LEXIS 492.

#### 4. Time Limitations

Nonstatutory speaking motions to strike and dismiss complaint on ground that it was false, fictitious and sham, though made at time when no answer had been filed as required by § 437c, prior to its amendment, were properly made and granted in view of this section. *Lincoln v. Didak* (1958, Cal App 2d Dist) 162 Cal App 2d 625, 328 P2d 498, 1958 Cal App LEXIS 1916.

A defendant can move to strike a complaint only before he has answered it and not afterward, and a minute order, insofar as it purported to grant a motion made after a complaint has been answered as a motion to strike the complaint, was void. *Adohr Milk Farms, Inc. v. Love* (1967, Cal App 1st Dist) 255 Cal App 2d 366, 63 Cal Rptr 123, 1967 Cal App LEXIS 1284.

#### 5. Summary Judgment

CCP § 437c, relating to summary judgments, makes it unnecessary to resort to former procedure of supporting, by affidavits and facts outside pleadings, motion to strike complaint. *Lerner v. Ehrlich* (1963, Cal App 1st Dist) 222 Cal App 2d 168, 35 Cal Rptr 106, 1963 Cal App LEXIS 1640.

A motion to strike a cross-complaint was, in effect, a motion for summary judgment where the motion was supported by an affidavit. *Hosking v. Spartan Properties, Inc.* (1969, Cal App 1st Dist) 275 Cal App 2d 152, 79 Cal Rptr 893, 1969 Cal App LEXIS 1900.

The trial court erred in granting an investment company's motion for an order to strike a foreign corporation's answer and cross-complaint pursuant to CCP § 435, former CCP § 453 (see now CCP § 436), Corp C § 2203, and Rev & Tax C § 23301, in an action against the corporation for breach of a lease, where the stated ground for the order was that the corporation was doing intrastate business without having complied with the appropriate provisions of the Corporations Code and the Revenue and Taxation Code. The extensive evidentiary showing on the motion to strike made it a "speaking" motion to strike not authorized by CCP § 435, and treated as motion for summary judgment, the motion did not meet the requirements for a summary judgment for the investment company. There was at least a triable issue of fact as to whether the corporation's transactions in this state amounted to intrastate business necessitating a certificate of qualification (Corp C § 2105(a)), and the showing on the motion included uncontradicted evidence supporting an inference there had been no forfeiture of the corporation's powers, rights, and privileges for nonpayment of franchise taxes pursuant to Rev & Tax C §§ 23301, 23302. *Mediterranean Exports, Inc. v. Superior Court of San Mateo County* (1981, Cal App 1st Dist) 119 Cal App 3d 605, 174 Cal Rptr 169, 1981 Cal App LEXIS 1771.

#### 6. Particular Determinations

There was no abuse of discretion in striking third amended complaint and entering judgment of dismissal where, in all of pleadings, there were numerous inconsistencies, contradictions, ambiguities, conflicts and uncertainties that amended complaints did not explain or clarify, where no substantial amendments were made though plaintiff was given ample opportunity to do so, and where changes made by plaintiff were result of efforts to conform to theory of recovery rather than to state facts as they really existed. *Tostevin v. Douglas* (1958, Cal App 2d Dist) 160 Cal App 2d 321, 325 P2d 130, 1958 Cal App LEXIS 2124.

Complaint charging false imprisonment and theft of cash bail was false, fictitious, sham, constituted abuse of process of court and was properly dismissed where plaintiff was imprisoned pursuant to commitment valid on its face and cash bail was forfeited by order of court. *Lincoln v. Didak* (1958, Cal App 2d Dist) 162 Cal App 2d 625, 328 P2d

498, 1958 Cal App LEXIS 1916.

Where an order's caption read "Motion of defendants...for order to dismiss Complaint or in the alternative, to strike Complaint or for Judgment on the Pleadings..." and the operative part of the order stated only "Motion granted.", and no further order, formal or otherwise, was entered, and the trial court signed no order, and no judgment was entered, the order appealed from is neither an order granting a motion to dismiss the complaint nor an order granting a motion for judgment on the pleadings but rather is a void order granting a motion to strike the complaint in the action, and defendants' original motion is still pending in the trial court. *Adohr Milk Farms, Inc. v. Love* (1967, Cal App 1st Dist) 255 Cal App 2d 366, 63 Cal Rptr 123, 1967 Cal App LEXIS 1284.

Trial court abused its discretion in granting a motion to strike a breach of contract complaint without leave to amend under CCP §§ 435, 436; it is more appropriate and just to treat a corporation's failure to be represented by an attorney as a defect that may be corrected, on such terms as are just in the sound discretion of the court; this approach honors the policies that complaints are to be liberally construed under CCP § 452 and that a corporation shall be deemed a "person" with the capacity to be a party to a lawsuit under CCP § 17 and Corp C § 207. *CLD Construction, Inc. v. City of San Ramon* (2004, Cal App 1st Dist) 120 Cal App 4th 1141, 16 Cal Rptr 3d 555, 2004 Cal App LEXIS 1191.

Foreign corporation that changed its state of incorporation while it was a party to a pending California lawsuit had the capacity under *Nev. Rev. Stat. § 92A.250* and 8 Del. C. § 265 to pursue the action after its conversion, and it was not obligated to satisfy the conversion requirements set forth in Corp C § 1157; to follow the procedures under Corp C § 2107, for notice of certain corporate changes; or to immediately file a Corp C § 2112, certificate of surrender when it obtained a new Corp C § 2105, certificate of qualification. Striking its pleadings under CCP §§ 435, 436(b), was therefore error. *The Capital Gold Group, Inc. v. Nortier* (2009, 2d Dist) 176 Cal App 4th 1119, 98 Cal Rptr 3d 439, 2009 Cal App LEXIS 1377.

No prejudice resulted from striking an amended class certification motion because plaintiff employees did not argue or show that they were entitled to certification of a class broader than that alleged in their operative complaint and thus that the amended class certification motion should have been granted. *Jones v. Farmers Ins. Exchange* (2013, 2d Dist) 2013 Cal App LEXIS 955.

## 7. Appeal and Error

It was not prejudicial error to strike portions of defendant insurance company's pleadings and to refuse filing of others which consisted of allegations of fraud and collusion of insureds and driver's insurance company to mulct defendant company of its right of subrogation to insureds' claim, if any, against driver, where defendant company's counsel said he was making no contention of fraud or collusion and there was no evidence of or offer to prove fraud or collusion. *Cassin v. Financial Indem. Co.* (1958, Cal App 1st Dist) 160 Cal App 2d 631, 325 P2d 228, 1958 Cal App LEXIS 2165.

Appeal from order striking corporation's claim and answer was dismissed where claims asserted by it through such answer were adjudicated adversely to it by judgments of superior court which became final, and where such appeal was baseless and without semblance of merit. *People ex rel. Department of Public Works v. Ashby* (1958, Cal App 2d Dist) 161 Cal App 2d 34, 325 P2d 1010, 1958 Cal App LEXIS 1700.

Orders sustaining a demurrer without leave to amend and granting a motion to strike are purely interlocutory and are not appealable. *Oeth v. Mason* (1967, Cal App 2d Dist) 247 Cal App 2d 805, 56 Cal Rptr 69, 1967 Cal App LEXIS 1739.

An order granting a motion to strike a complaint, so as to remove from the case the only cause of action alleged against defendants, and to leave no issues to be determined between the opposing parties, is an appealable order within

the meaning of former CCP § 963 (see now *CCP § 904.1*). *Adohr Milk Farms, Inc. v. Love* (1967, *Cal App 1st Dist*) 255 *Cal App 2d* 366, 63 *Cal Rptr* 123, 1967 *Cal App LEXIS* 1284.

**SUGGESTED FORMS**

Notice of Motion for Order to Strike All or Part of Complaint or Cross-Complaint

Order to Strike Certain Allegations of Complaint or Cross-Complaint