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### Cal Code Civ Proc § 436

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### § 436. Improper matter or nonconforming pleading; Discretion of court

The court may, upon a motion made pursuant to [Section 435](#), or at any time in its discretion, and upon terms it deems proper:

- (a) Strike out any irrelevant, false, or improper matter inserted in any pleading.
- (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

### History

Added Stats 1982 ch 704 § 3.5. Amended Stats 1983 ch 1167 § 4.

▼ Annotations

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Notes

⬇ **Historical Derivation:**

⬇ **Amendments:**

⬆ **Historical Derivation:**

(a) Former CCP § 453, as enacted 1872.

(b) Practice Act § 50 (Stats 1851 ch 5 § 50), as amended Stats 1854 ch 54 § 9, Stats 1860 ch 314 § 6, Stats 1862 ch 439 § 2, Stats 1865–66 ch 534 § 3.

(c) Practice Act § 57 (Stats 1851 ch 5 § 57).

(d) Stats 1850 ch 142 § 49.

(e) NY Code § 160.

#### **📄 Amendments:**

##### **1983 Amendment:**

Substituted (1) subd (a) for former subd (a) which read: "(a) Strike from any pleading any irrelevant, false, or improper matter inserted therein."; and (2) "out all or any part of any pleading" for "any pleading or part thereof" in subd (b).

## Notes to Decisions

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### **📄 Decisions Under Current Law**

#### **📄 1. Generally**

Where a defendant has shown that a substantial part of a cause of action constitutes speech or petitioning activity protected by the anti-SLAPP statute, thereby requiring the plaintiff to show a probability of prevailing on the cause of action to avoid dismissal, the plaintiff need only show a probability of prevailing on any part of its claim; once the plaintiff makes this showing, the court need not determine whether the plaintiff can substantiate all theories presented within the single cause of action. The anti-SLAPP procedure may not be used like a motion to strike under [CCP § 436](#), eliminating those parts of a cause of action that a plaintiff cannot substantiate.

[Mann v. Quality Old Time Service, Inc. \(Cal. App. 4th Dist. June 30, 2004\)](#), [120 Cal. App. 4th 90](#), [15 Cal. Rptr. 3d 215](#), [2004 Cal. App. LEXIS 1046](#), overruled in part, [Baral v. Schnitt \(Cal. Aug. 1, 2016\)](#), [205 Cal. Rptr. 3d 475](#), [376 P.3d 604](#), [1 Cal. 5th 376](#), [2016 Cal. LEXIS 6383](#).

Orders granting a regional water quality board's motions to strike portions of a petition challenging a municipal water discharge permit were proper under [CCP § 436](#), which allows a court to strike portions of a cause of action. [County of Los Angeles v. State Water Resources Control Bd. \(Cal. App. 2d Dist. Oct. 5, 2006\)](#), [143 Cal. App. 4th 985](#), [50 Cal. Rptr. 3d 619](#), [2006 Cal. App. LEXIS 1546](#), modified, [\(Cal. App. 2d Dist. Nov. 6, 2006\)](#), [2006 Cal. App. LEXIS 1744](#).

## 📌 2. Construction

In a dispute covering the course of several civil suits and probate proceedings following a decedent's death, wherein all of the claimants except appellant, the decedent's stepdaughter, including appellant's sister, settled their differences without notice to appellant, and then secured a stipulated order from the trial court purporting to extinguish her rights against the decedent's estate and trust, the trial court erred in striking appellant's civil complaint on her denied probate claim on the ground that it was precluded by prior judgments or orders where none of the orders cited as bars to the action was shown to possess the characteristics necessary to give them preclusive effect against appellant. Because the complaint of appellant's sister fell far short of apprising appellant of the nature of any relief that her sister might have sought against her, let alone its basis, the complaint could not have supported a default judgment even if the sister had tried to obtain one, which she did not. [Ferraro v. Camarlinghi \(Cal. App. 6th Dist. Mar. 27, 2008\)](#), 161 Cal. App. 4th 509, 75 Cal. Rptr. 3d 19, 2008 Cal. App. LEXIS 423, modified, [\(Cal. App. 6th Dist. Apr. 24, 2008\)](#), 2008 Cal. App. LEXIS 614.

## 📌 3. Applicability

Demurrer should not have been sustained on the basis of failure to exhaust administrative remedies because that basis would not have disposed of the entire cause of action; the proper vehicle for challenging particular allegations as being barred by a failure to exhaust administrative remedies was a motion to strike those allegations from the complaint under [CCP § 436](#). [Brand v. Regents of University of California \(Cal. App. 4th Dist. Jan. 18, 2008\)](#), 159 Cal. App. 4th 1349, 72 Cal. Rptr. 3d 419, 2008 Cal. App. LEXIS 217, review granted, [\(Cal. May 14, 2008\)](#), 76 Cal. Rptr. 3d 681, 183 P.3d 383, 2008 Cal. LEXIS 5417.

## 📌 4. Irrelevant, False, or Improper Matter

District court erred when it gave preclusive effect to the state superior court's striking of the reservation as irrelevant pursuant to [CCP 436](#) because although pursuant to [28 U.S.C.S. § 1738](#), the district court was required to give full faith and credit to the state court's decision to strike the limited partnership's (LP) *England* reservation, even granting full faith and credit to the state court's decision to delete the LP's *England* reservation from its complaint, the state court's action could not have had any "preclusive" effect on the claims the LP could assert before a federal court, because an explicit, on the record reservation was not required to preserve federal claims. Although the LP's renewed reservation was made after the district court had abstained under *Younger*, the second assertion of its *England* rights was also valid because the district court did not dismiss the action but deferred its pending resolution of the decision of the state court of appeal; therefore, the state court's decision to strike the renewed reservation had no effect on its validity. [Los Altos El Granada Investors v. City of Capitola \(9th Cir. Cal. Oct. 7, 2009\)](#), 583 F.3d 674, 2009 U.S. App. LEXIS 22044.

In a rent control case, the trial court should not have struck the owner's *England* reservation of federal takings claims. The better practice is to permit assertion of *England* reservations where the litigant's federal claims have been dismissed for lack of ripeness under *Williamson*, or where the litigant anticipates such dismissal and files first in state court. [Colony Cove Properties, LLC v. City of Carson \(Cal. App. 2d Dist. Oct. 21, 2013\)](#), 220 Cal. App. 4th 840, 163 Cal. Rptr. 3d 499, 2013 Cal. App. LEXIS 839, modified, [\(Cal. App. 2d Dist. Nov. 18, 2013\)](#), 2013 Cal. App. LEXIS 929.

## 📌 5. Nonconforming Pleading: State Law

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](#), subd. (b), was therefore error. [The Capital Gold Group, Inc. v. Nortier \(Cal. App. 2d Dist. Aug. 19, 2009\)](#), 176 Cal. App. 4th 1119, 98 Cal. Rptr. 3d 439, 2009 Cal. App. LEXIS 1377.

In an insured's action to recover losses allegedly suffered as a result of unsuccessful efforts to salvage his yacht that ran aground on a Mexican beach, the trial court properly granted a motion to strike the insured's request for emotional distress damages filed against the insurance agency that procured the insured's marine insurance policy and the insurer because such damages were not recoverable under maritime law, as the insured alleged the damages resulted from injury to property alone, rather than physical injury. [Brandwein v. Butler \(Cal. App. 4th Dist. Aug. 9, 2013\)](#), 218 Cal. App. 4th 1485, 161 Cal. Rptr. 3d 728, 2013 Cal. App. LEXIS 675.

Because an assignee lacked the legal capacity to sue to enforce a judgment as the assignee of a corporation that was suspended at the time of the assignment and that remained suspended at the time of the assignee's action to enforce the judgment, a trial court did not err in striking the complaint and dismissing the action in its entirety. Because a defense based on lack of capacity to sue could have been asserted against the suspended corporation had it brought the action itself, the assignee was subject to the same defense in suing to enforce the judgment as the suspended corporation's assignee. [Cal-Western Business Services, Inc. v. Corning Capital Group](#) (Cal. App. 2d Dist. Nov. 6, 2013), 221 Cal. App. 4th 304, 163 Cal. Rptr. 3d 911, 2013 Cal. App. LEXIS 899.

## **📌 6. Nonconforming Pleading: Court Order**

In a business dispute between a doctor and a hospital, the plaintiffs' failure to file a fourth amended complaint within the time specified by the trial court resulted in the following statutory ramifications: (1) plaintiffs no longer had an unfettered right to file an amended complaint; (2) to obtain the court's permission, plaintiffs were required to file a noticed motion for leave to amend ([CCP § 473\(a\)\(1\)](#)); (3) any subsequently filed pleading was subject to a motion to strike, either by defendants or on the court's own motion ([CCP § 436\(b\)](#)); and (4) the entire action was subject to dismissal in the court's discretion under [CCP § 581\(f\)\(2\)](#). [Leader v. Health Industries of America, Inc.](#) (Cal. App. 2d Dist. May 29, 2001), 89 Cal. App. 4th 603, 107 Cal. Rptr. 2d 489, 2001 Cal. App. LEXIS 399.

Pursuant to [CCP § 436\(b\)](#), the trial court properly struck an additional cause of action that exceeded the scope of a grant of leave to amend following a demurrer because that portion of the amended pleading was not drawn or filed in conformity with an order of the court. [Community Water Coalition v. Santa Cruz County Local Agency Formation Com.](#) (Cal. App. 6th Dist. Nov. 18, 2011), 200 Cal. App. 4th 1317, 134 Cal. Rptr. 3d 899, 2011 Cal. App. LEXIS 1444, modified, (Cal. App. 6th Dist. Dec. 9, 2011), 2011 Cal. App. LEXIS 1542.

## **📌 7. Nonconforming Pleading: Leave to Amend**

In an action for legal malpractice, the trial court abused its discretion in striking the plaintiff's first amended complaint without leave to amend and dismissing the action without prior request or notice, where the plaintiff's attorney neglected to sign the first amended complaint as required by [CCP § 128.7\(a\)](#). Although striking the first amended complaint was authorized substantively by [CCP § 128.7\(a\)](#), the defendants' motion to strike the first amended complaint on this ground was not a request for [CCP § 128.7](#) "sanctions" necessitating compliance with the procedural requirements of [CCP § 128.7](#), but instead a procedure under [CCP § 436](#). Under [CCP §§ 436\(b\), 472a\(d\)](#), the trial court could strike the pleading only upon terms it deemed proper, that is, upon such terms as were just. Since the omission of counsel's signature was capable of cure, the trial court should have allowed leave to amend. Further, the mandatory provision of [CCP § 473](#) required the court to set aside the order of dismissal when the plaintiff's counsel admitted his neglect. [Vaccaro v. Kaiman](#) (Cal. App. 2d Dist. Apr. 30, 1998), 63 Cal. App. 4th 761, 73 Cal. Rptr. 2d 829, 1998 Cal. App. LEXIS 390.

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](#) (Cal. App. 1st Dist. July 23, 2004), 120 Cal. App. 4th 1141, 16 Cal. Rptr. 3d 555, 2004 Cal. App. LEXIS 1191.

## **📌 8. Appeal and Error**

Although the trial court should have sustained a demurrer to a survival cause of action instead of granting a motion to strike, this procedural error was harmless because the cause of action was susceptible to summary adjudication on the same motion. [Quiroz v. Seventh Ave. Ctr.](#) (Cal. App. 6th Dist. June 27, 2006), 2006 Cal. App. LEXIS 968.

## **📌 Decisions Under Former Law**

### **📌 1. Generally**

Although neither this section nor any other provides for striking complaints from the file where they are sham or frivolous, the court may by its inherent power strike a complaint which is not filed in good faith, disregards procedural requirements, or otherwise violates orderly judicial administration. [Neal v. Bank of America National](#)

[Trust & Savings Assn. \(Cal. App. Sept. 20, 1949\)](#), 93 Cal. App. 2d 678, 209 P.2d 825, 1949 Cal. App. LEXIS 1443.

Facts warranting dismissal of action on ground that it is sham, fictitious or without merit may be made to appear by affidavit, as well as by record of prior judicial proceedings. [Lincoln v. Didak \(Cal. App. 2d Dist. Aug. 6, 1958\)](#), 162 Cal. App. 2d 625, 328 P.2d 498, 1958 Cal. App. LEXIS 1916.

Court has inherent power, in order to prevent abuse of judicial process, to dismiss action shown to be sham, fictitious, or without merit. [Lincoln v. Didak \(Cal. App. 2d Dist. Aug. 6, 1958\)](#), 162 Cal. App. 2d 625, 328 P.2d 498, 1958 Cal. App. LEXIS 1916.

The power to strike sham and irrelevant answers and irrelevant and redundant matter inserted in a pleading (former CCP § 453, see now [CCP § 436](#)), is necessarily a limited one; the court does not decide the issues but only determines whether issues exist under pleadings offered in good faith, and an answer will not be stricken if the defendant files an affidavit or declaration in support of his pleaded defense. [Ford Motor Co. v. Superior Court \(Cal. App. 2d Dist. Mar. 31, 1971\)](#), 16 Cal. App. 3d 442, 94 Cal. Rptr. 127, 1971 Cal. App. LEXIS 1599.

## **↑ 2. Sham and Irrelevant Answers**

A verified answer setting up a defense to the action was improperly stricken out as sham, where the answer was not shown to be unquestionably false in fact, and not pleaded in good faith. [Continental Bldg. & Loan Asso. v. Boggess \(Cal. Sept. 29, 1904\)](#), 145 Cal. 30, 78 P. 245, 1904 Cal. LEXIS 538.

Where the answer, besides containing irrelevant and evidential matter, sets forth a sufficient defense, only the irrelevant matter should be stricken out, and it is error to strike out the defense. [Continental Bldg. & Loan Asso. v. Boggess \(Cal. Sept. 29, 1904\)](#), 145 Cal. 30, 78 P. 245, 1904 Cal. LEXIS 538.

Allegations which do no more than set forth the semblance of a cause of action are proof against assault on the ground that they are sham and frivolous. [McClung v. Watt \(Cal. Dec. 5, 1922\)](#), 190 Cal. 155, 211 P. 17, 1922 Cal. LEXIS 279.

Where a plaintiff in support of a motion to strike portions of an answer on the ground that they are sham, irrelevant and redundant files an affidavit containing various facts, the failure of the defendant to file counter-affidavits on such motion admits such alleged facts. [Green v. Green \(Cal. App. Sept. 26, 1944\)](#), 66 Cal. App. 2d 50, 151 P.2d 679, 1944 Cal. App. LEXIS 1156.

Former CCP § 453 (see now [CCP § 436](#)), providing that sham and irrelevant answers and irrelevant and redundant matter inserted in a pleading may be stricken out, an answer which on its face states a good defense may be shown by extrinsic evidence (usually affidavits or declarations) to be false or sham. [Ford Motor Co. v. Superior Court \(Cal. App. 2d Dist. Mar. 31, 1971\)](#), 16 Cal. App. 3d 442, 94 Cal. Rptr. 127, 1971 Cal. App. LEXIS 1599.

## **↑ 3. Irrelevant and Redundant Matters**

That matter in a complaint is redundant is a ground for striking the same, but is not ground for demurrer. [Henke v. Eureka Endowment Asso. \(Cal. Dec. 21, 1893\)](#), 100 Cal. 429, 34 P. 1089, 1893 Cal. LEXIS 813.

Irrelevant matter in an answer was properly stricken out under this section. [Eich v. Greeley \(Cal. Mar. 26, 1896\)](#), 112 Cal. 171, 44 P. 483, 1896 Cal. LEXIS 661.

The court should never strike out matter which will leave a complaint defective, and thus lead to a dismissal of the action. [Allerton v. King \(Cal. App. Jan. 9, 1929\)](#), 96 Cal. App. 230, 274 P. 90, 1929 Cal. App. LEXIS 873.

Where allegations are at most uncertain, but cannot be reached by motion to strike as irrelevant or irresponsible to the complaint, the only remedy is by demurrer on the ground that the complaint is ambiguous, unintelligible or uncertain. [Allerton v. King \(Cal. App. Jan. 9, 1929\)](#), 96 Cal. App. 230, 274 P. 90, 1929 Cal. App. LEXIS 873.

## **↑ 4. Motion to Strike: Generally**

Before it can be said that an answer was properly stricken out on the ground that it was sham, it must appear that no defense was set up by it, for a verified answer, setting up a defense, either affirmatively or by a denial of the allegations of the complaint, may not be considered sham before a trial of the issues. [Prichard v. Kimball \(Cal. Apr. 11, 1923\)](#), 190 Cal. 757, 214 P. 863, 1923 Cal. LEXIS 605.

To get rid of immaterial matter in a pleading, the remedy is by a motion to strike instead of demurrer. [Anglo American Land Co. v. Sundberg \(Cal. App. Mar. 25, 1924\)](#), 66 Cal. App. 331, 225 P. 874, 1924 Cal. App. LEXIS 529.

A motion to strike cannot be made to serve the purpose of a special demurrer. [Allerton v. King \(Cal. App. Jan. 9, 1929\)](#), 96 Cal. App. 230, 274 P. 90, 1929 Cal. App. LEXIS 873.

Where a motion to strike is so broad as to include relevant matters, the motion should be denied in its entirety. [Allerton v. King \(Cal. App. Jan. 9, 1929\)](#), 96 Cal. App. 230, 274 P. 90, 1929 Cal. App. LEXIS 873.

Where portions of an answer constitute proper denials of the plaintiff's allegations, denial of a motion to strike an answer because of sham and irrelevant matter is proper, but the sham and irrelevant portions may be stricken. [Bozegian v. Bakirjian \(Cal. App. June 11, 1930\)](#), 106 Cal. App. 368, 289 P. 234, 1930 Cal. App. LEXIS 716.

Where there is a sufficient pleading of the ultimate facts in the complaint, and additional facts pleaded are mere surplusage, the proper attack is a motion to strike out, and not a demurrer. [Bean v. Reicker \(Cal. App. Feb. 2, 1932\)](#), 120 Cal. App. 403, 7 P.2d 1055, 1932 Cal. App. LEXIS 43.

A moot question, in order to warrant the granting of a motion to dismiss the entire complaint, must affect the entire subject matter of the pleadings and be completely moot; where facts are pleaded, even though imperfectly, the motion to strike out the entire pleadings should be denied. [Honan v. Title Ins. & Trust Co. \(Cal. App. Nov. 1, 1935\)](#), 9 Cal. App. 2d 675, 50 P.2d 1068, 1935 Cal. App. LEXIS 1212.

A motion to strike out certain portions of the complaint is addressed to the sound discretion of the trial court. [Colden v. Broadway State Bank \(Cal. App. Jan. 25, 1936\)](#), 11 Cal. App. 2d 428, 53 P.2d 983, 1936 Cal. App. LEXIS 369.

A pleading claimed to be insufficient to state a cause of action may properly be attacked by a motion to strike, and the court may properly grant it where otherwise required to sustain, without relief to amend, demurrers which had been interposed to the pleading. [Barr Lumber Co. v. Shaffer \(Cal. App. Dec. 4, 1951\)](#), 108 Cal. App. 2d 14, 238 P.2d 99, 1951 Cal. App. LEXIS 1994.

While motion to strike portions of a complaint is addressed to sound discretion of court, a matter which is essential to cause of action should not be stricken and it is error to do so. [Clements v. T. R. Bechtel Co. \(Cal. July 9, 1954\)](#), 43 Cal. 2d 227, 273 P.2d 5, 1954 Cal. LEXIS 243.

[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 sham answer. [Lerner v. Ehrlich \(Cal. App. 1st Dist. Nov. 8, 1963\)](#), 222 Cal. App. 2d 168, 35 Cal. Rptr. 106, 1963 Cal. App. LEXIS 1640.

Though irrelevant and redundant matter inserted in pleading may be stricken by court ([CCP § 453](#)), motion to strike cannot be made to serve purpose of special demurrer. Where motion to strike is so broad as to include relevant matters, motion should be denied in its entirety. [Triodyne, Inc. v. Superior Court of Los Angeles County \(Cal. App. 2d Dist. Mar. 2, 1966\)](#), 240 Cal. App. 2d 536, 49 Cal. Rptr. 717, 1966 Cal. App. LEXIS 1379.

Where motion to strike was on asserted ground of irrelevancy but was not directed to any particular allegations and no showing of irrelevancy was made, motion must be considered as one to strike or dismiss entire count on basis that it was sham. [Triodyne, Inc. v. Superior Court of Los Angeles County \(Cal. App. 2d Dist. Mar. 2, 1966\)](#), 240 Cal. App. 2d 536, 49 Cal. Rptr. 717, 1966 Cal. App. LEXIS 1379.

On making of motion to dismiss as sham pleading that is good on its face and supported by facts outside pleadings, court should treat motion as one for summary judgment and decide it on basis of requirements of [CCP § 437c](#), concerning summary judgment procedure. [Triodyne, Inc. v. Superior Court of Los Angeles County \(Cal. App. 2d Dist. Mar. 2, 1966\)](#), 240 Cal. App. 2d 536, 49 Cal. Rptr. 717, 1966 Cal. App. LEXIS 1379.

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 \(Cal. App. 1st Dist. Oct. 25, 1967\)](#), 255 Cal. App. 2d 366, 63 Cal. Rptr. 123, 1967 Cal. App. LEXIS 1284.

## **📌 5. Motion to Strike: Leave to Amend**

It is proper to strike from amended complaint a count which merely repeats without change, allegations in original complaint as to which demurrer had been sustained. [Taliaferro v. Prettner \(Cal. App. 1st Dist. Aug. 22, 1955\)](#), 135 Cal. App. 2d 157, 286 P.2d 977, 1955 Cal. App. LEXIS 1340, cert. denied, (U.S. Apr. 1, 1956), 351 U.S. 963, 76 S. Ct. 1024, 100 L. Ed. 1483, 1956 U.S. LEXIS 762.

If amended complaint does not state cause of action and in its entirety is sham, redundant and not pleaded in good faith, court may be justified in ordering it stricken; but if it is timely, filed in good faith, is not sham and properly pleads cause of action, court has no authority to strike it and enter judgment of dismissal. [Witczak v. Johnson \(Cal. App. 4th Dist. Dec. 4, 1956\)](#), 146 Cal. App. 2d 599, 303 P.2d 1091, 1956 Cal. App. LEXIS 1508.

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 \(Cal. App. 2d Dist. May 12, 1958\)](#), 160 Cal. App. 2d 321, 325 P.2d 130, 1958 Cal. App. LEXIS 2124.

Though there is no statutory provision for striking complaints from file, as there is in respect to sham or frivolous answers, court may, by virtue of its inherent power to prevent frustration or abuse of its processes, strike purported amended complaint which 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. [Williams v. International Longshoremen's & Warehousemen's Union \(Cal. App. 1st Dist. July 17, 1959\)](#), 172 Cal. App. 2d 84, 341 P.2d 729, 1959 Cal. App. LEXIS 1927.

It is not improper for trial court to grant motion to strike amended complaint after pleader has made several ineffectual attempts to state cause of action. [Williams v. International Longshoremen's & Warehousemen's Union \(Cal. App. 1st Dist. July 17, 1959\)](#), 172 Cal. App. 2d 84, 341 P.2d 729, 1959 Cal. App. LEXIS 1927.

## **📌 6. Waiver**

When a case is tried without any motion to strike out certain denials in the answer, and after judgment on such trial is reversed on appeal, no motion to strike out is made for a series of years after the remittitur is filed, until just before the commencement of the second trial, the delay operates as a waiver, and a motion to strike out comes too late. [Silvarer v. Hansen \(Cal. Dec. 26, 1888\)](#), 77 Cal. 579, 20 P. 136, 1888 Cal. LEXIS 750.

Where an amended complaint is filed after the action of the court in striking out portions of the original complaint, the error, if any, in the order striking out, is thereby waived. [Collins v. Scott \(Cal. Dec. 21, 1893\)](#), 100 Cal. 446, 34 P. 1085, 1893 Cal. LEXIS 817.

The filing of an amended complaint supersedes any previous complaint, and is a waiver of any error in striking out a portion of a previous complaint as being irrelevant and redundant. [Brittan v. Oakland Bank of Sav. \(Cal. Mar. 23, 1896\)](#), 112 Cal. 1, 44 P. 339, 1896 Cal. LEXIS 638.

Filing of motion to strike portions of complaint is not waiver of right to move for change of venue. [Marshall v. Benedict \(Cal. App. 1st Dist. June 12, 1958\)](#), 161 Cal. App. 2d 284, 326 P.2d 516, 1958 Cal. App. LEXIS 1732.

## **📌 7. Particular Actions: Brokers**

In an action against a real estate broker, where the gist of the complaint was negligence, the fact that the plaintiffs went into detail in telling the story, instead of merely alleging ultimate facts and in so doing injected allegations of statements and representations made during the real estate negotiations, of a purely preliminary character, which added nothing to the statement of the case itself, did not warrant an attack by demurrer on the ground that while the complaint alleged negligence, it might also allege fraud if other allegations were added, and the motion to strike out the surplusage would have been the proper remedy. [Smithson v. Sparber \(Cal. App. Apr. 30, 1932\)](#), 123 Cal. App. 225, 11 P.2d 90, 1932 Cal. App. LEXIS 849.

In an order to recover a broker's commission, defendant's motion for summary judgment, which was in effect a motion to strike respondent's complaint pursuant to [CCP § 437c](#), on the ground that the action was without merit, was properly denied where on its face the complaint appeared sufficient, and nothing was shown indicating it was a sham or its allegations false. [Duffy v. Campbell \(Cal. App. 1st Dist. May 4, 1967\)](#), 250 Cal. App. 2d 662, 58 Cal. Rptr. 653, 1967 Cal. App. LEXIS 2148.

## **📌 8. Particular Actions: Mortgages**

A plea of the statute of limitations in an unverified answer to a complaint of foreclosure of a mortgage is

properly stricken out as sham, where it appears from the copies of the note and mortgage set out in the complaint that the action was commenced within four years after the maturity of the note. [Bank of Shasta v. Boyd \(Cal. Oct. 5, 1893\), 99 Cal. 604, 34 P. 337, 1893 Cal. LEXIS 723.](#)

In an action to foreclose a mortgage, where the note secured appears to have been made to the plaintiff and not assigned to it, an allegation that the plaintiff is the owner of the note tenders no material issue, and a denial of it in the answer is irrelevant. [Bank of Shasta v. Boyd \(Cal. Oct. 5, 1893\), 99 Cal. 604, 34 P. 337, 1893 Cal. LEXIS 723.](#)

Where an unverified complaint in an action to foreclose a mortgage alleges that neither interest nor principal of the note has been paid, an answer containing a general denial puts in issue every material allegation of the complaint and raises a material issue as to payment, and it is error to strike out the answer. [Bank of Shasta v. Boyd \(Cal. Oct. 5, 1893\), 99 Cal. 604, 34 P. 337, 1893 Cal. LEXIS 723.](#)

In an action by a building and loan association to foreclose a mortgage, stipulating that on default the mortgagee may apply the cash surrender value of the shares pledged as security, upon application of which such shares are to vest in the mortgagee, where the complaint alleges the cash surrender value of the certificate representing such shares, a portion of the answer not denying the cash surrender value alleged, but merely averring that the affairs of the corporation have been corruptly managed by one who is its secretary and manager, and that, if its affairs had been properly managed, the cash surrender value would be greater, is irrelevant and is properly stricken as such. [Continental Bldg. & Loan Asso. v. Boggess \(Cal. Sept. 29, 1904\), 145 Cal. 30, 78 P. 245, 1904 Cal. LEXIS 538.](#)

#### **📌 9. Particular Actions: Personal Injury; Wrongful Death**

In an action for damages for the death of a minor through the alleged negligence of the defendant taxi company, the court properly refused to strike out as surplusage the words "carelessly and negligently" in the complaint, wherein they appeared in the sentence, "the defendant...carelessly and negligently drove an automobile," etc., and also, "then and there so carelessly and negligently managed said automobile," etc. [Peluso v. City Taxi Co. \(Cal. App. May 27, 1919\), 41 Cal. App. 297, 182 P. 808, 1919 Cal. App. LEXIS 394.](#)

In an action for personal injuries resulting from a collision of automobiles on a highway, the granting of the plaintiff's motion to strike from the action the charged negligence on the part of the driver of the machine in which the plaintiff was riding was correct, where in a previous part of the pleading the defendant had sufficiently denied negligence in the operation of his automobile. [Dover v. Archambeault \(Cal. App. May 12, 1922\), 57 Cal. App. 659, 208 P. 178, 1922 Cal. App. LEXIS 453.](#)

In an action for damages for personal injuries occasioned by a truck passing over a child's leg, there is no error in striking from the complaint the allegation of a city ordinance, where the action is not one for the violation of the ordinance, and it is admissible in evidence without being pleaded. [Szopieray v. West Berkeley Express & Draying Co. \(Cal. July 1, 1924\), 194 Cal. 106, 227 P. 720, 1924 Cal. LEXIS 217.](#)

In a personal injury action by an automobile owner against the manufacturer and the retailer of the automobile plaintiff was driving when involved in an accident, the trial court properly granted plaintiff's motion to strike the retailer's alleged affirmative defenses of retraxit and res judicata, where, though the judgment allegedly constituting the basis for such defenses was rendered in an action against plaintiff arising out of the same accident, the retailer was not a party thereto nor in privity with a party, and the cause of action was not the same, and where the retailer also asserted the specific defense of collateral estoppel. [Ford Motor Co. v. Superior Court \(Cal. App. 2d Dist. Mar. 31, 1971\), 16 Cal. App. 3d 442, 94 Cal. Rptr. 127, 1971 Cal. App. LEXIS 1599.](#)

#### **📌 10. Particular Actions: Real Property**

In an action of ejectment, where the defendant alleges as a defense that the only right or title under which the plaintiff's claim arises is from a pretended entry of the land at the United States Land Office as a placer mining claim, which entry was founded on fraudulent proceedings, and that the defendant had filed a protest against allowance of the entry and that he believes the hearing will be granted and the entry canceled, but the answer fails to state the pendency of any question in the land office as to the validity of the plaintiff's certificate of purchase, or facts from which the pendency of such question must be necessarily inferred, the action of the trial court in striking out such defense from the answer is not error. [McTarnahan v. Pike \(Cal. Oct. 15, 1891\), 91 Cal. 540, 27 P. 784, 1891 Cal. LEXIS 1126.](#)

Where the judge of the court was made a party defendant to a complaint in an action for the partition of land,

as the alleged claimant of an interest therein, which interest is denied in the complaint, the court exceeded its jurisdiction in making an ex parte order, of its own motion, without notice to the other parties, or any hearing, striking the complaint from the files on the ground that it was false, deceitful, and abusive in its allegation making the judge a party, and that it was done solely for the purpose of disqualifying him. [Younger v. Superior Court of Santa Cruz County \(Cal. July 3, 1902\)](#), 136 Cal. 682, 69 P. 485, 1902 Cal. LEXIS 790.

In an action to enjoin the defendants from enlarging a slough, and from constructing or maintaining a proposed ditch, and from doing anything else whereby waters might be precipitated on the plaintiffs' lands, an averment in the answer, which, in effect, denies that the alleged excavations would cause the water falling on the defendants' lands to be carried to the plaintiffs' lands in greater quantities than would occur under natural conditions, raises a material issue and it is error to strike it out. [Heier v. Krull \(Cal. Aug. 4, 1911\)](#), 160 Cal. 441, 117 P. 530, 1911 Cal. LEXIS 532.

In an action to enjoin the defendants from enlarging a slough, and from constructing or maintaining a proposed ditch, and from doing anything else whereby water on the defendants' lands might be precipitated on the plaintiffs' lands, allegations in the answer, to the effect that a drainage district had been previously formed for the purpose of draining lands in the vicinity of the plaintiffs' lands, and that such district under proper proceedings for the purpose, constructed the ditch over the plaintiffs' lands for the purpose of draining the waters of such slough and that the district purchased and owned a right of way over the plaintiffs' lands for the purpose, are immaterial and are properly stricken from the answer. [Heier v. Krull \(Cal. Aug. 4, 1911\)](#), 160 Cal. 441, 117 P. 530, 1911 Cal. LEXIS 532.

In an action to enforce an alleged trust in real property, there was no error in striking out allegations in the complaint in intervention to the effect that the property was taken in trust by a partnership, and that on the death of one partner the surviving partner caused the name of the former as grantor to be forged to a deed conveying the property to the surviving partner as grantee, where it was immaterial which partner held the legal title. [McCarthy v. McColgan \(Cal. App. June 19, 1929\)](#), 99 Cal. App. 492, 278 P. 918, 1929 Cal. App. LEXIS 498.

#### **📌 11. Particular Actions: Real Property: Quiet Title**

In an action by an heir to quiet title to land of a decedent as against the beneficiaries claiming under his will, where a demurrer to the defense under the will is improperly sustained, an order striking out a denial of plaintiff's title as sham is erroneous. [Toland v. Toland \(Cal. Dec. 23, 1898\)](#), 123 Cal. 140, 55 P. 681, 1898 Cal. LEXIS 999.

In an action to quiet title to real property, where the decree sought was based on affirmance that the proceedings leading to the execution of a deed were void, allegations of fraud, which were insufficient to constitute a cause of action and were not germane to the other allegations, should have been stricken out on motion, and were not such defects as to be grounds for demurrer. [Wood v. Roach \(Cal. App. Sept. 1, 1932\)](#), 125 Cal. App. 631, 14 P.2d 170, 1932 Cal. App. LEXIS 674.

#### **📌 12. Particular Actions: Miscellaneous: Motion to Strike Proper**

Where a defendant pleads an offer to let the plaintiffs take judgment in a stated amount under former CCP § 997 (see now [CCP § 998](#)), it is proper to strike out explanatory, apologetic, or extenuating matters accompanying the pleading of tender, which in no way go to the defense of the action. [Basler v. Sacramento Gas & Electric Co. \(Cal. Oct. 20, 1910\)](#), 158 Cal. 514, 111 P. 530, 1910 Cal. LEXIS 411.

In an action by an alleged corporation to recover money claimed to have been received by the defendants for its use, it is not error to strike out from the answer a denial, on information and belief, of the making of a demand by the plaintiff on the defendants for the money in controversy, as a defendant cannot deny on information and belief matters of which he has actual personal knowledge. [Sociedade do Espirito Santo v. Santa Clara Valley Bank \(Cal. App. May 23, 1914\)](#), 24 Cal. App. 592, 141 P. 1054, 1914 Cal. App. LEXIS 51.

In an action to recover an alleged balance due on the sale and delivery of certain coal, where the amended complaint distinctly claimed that the account was a continuing one and constituted an open account, but the defendant claimed that each item constituted a separate transaction, it was not error, under the particular circumstances, for the court to refuse to strike out averments in the amended complaint respecting the delivery of coal during the first two months of the account on the ground that such averment was sham, irrelevant and redundant. [Mercantile Trust Co. v. Doe \(Cal. App. Dec. 31, 1914\)](#), 26 Cal. App. 246, 146 P. 692, 1914 Cal. App. LEXIS 317.

It is not error to strike from the records an answer and cross complaint filed after the expiration of the time allowed where such pleading is wholly without merit and alleges no facts constituting any defense to the cause of action stated in the complaint, and no facts are alleged in the cross complaint on which any affirmative relief can be granted. [Collins v. Bicknell \(Cal. App. May 27, 1919\)](#), 41 Cal. App. 291, 182 P. 763, 1919 Cal. App. LEXIS 397.

In an action of unlawful detainer brought by a city, where the defendant had been in possession of the premises under lease from the city which expired by its own terms, and the city notified the defendant that no additional lease would be executed, an equitable defense based on a provision in the expired lease that in the event the city required the premises for municipal purposes all growing crops should be permitted to remain thereon until maturity and harvest, not exceeding in any case one year from the giving of notice of termination of the lease, is not available to the defendant and is properly stricken out upon motion. [Marysville v. Poole \(Cal. App. Feb. 5, 1926\)](#), 76 Cal. App. 478, 245 P. 248, 1926 Cal. App. LEXIS 515.

In an action for specific performance, the granting of a motion to strike portions of a complaint as to the description of the property involved, not contained in the agreement attempted to be enforced, attached to and made a part of the complaint, was proper. [Allen v. Stellar \(Cal. App. May 26, 1930\)](#), 106 Cal. App. 67, 288 P. 855, 1930 Cal. App. LEXIS 568.

It is proper to strike from an answer in a forcible entry and detainer action repetitious irrelevant countercharges and allegations of improper motive attributable to the plaintiff. [McNeil v. Higgins \(Cal. App. July 13, 1948\)](#), 86 Cal. App. 2d 723, 195 P.2d 470, 1948 Cal. App. LEXIS 1675.

Where a third amended answer was filed after time to answer having elapsed and without leave of court or stipulation between the parties, and defendant made bare allegations as to fraud, bad faith, and abuse of discretion without any allegation of specific facts, plaintiff's motion to strike was properly granted. [People v. Thomas \(Cal. App. Jan. 25, 1952\)](#), 108 Cal. App. 2d 832, 239 P.2d 914, 1952 Cal. App. LEXIS 1751.

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 \(Cal. App. 2d Dist. Aug. 6, 1958\)](#), 162 Cal. App. 2d 625, 328 P.2d 498, 1958 Cal. App. LEXIS 1916.

### **📌 13. Particular Actions: Miscellaneous: Motion to Strike Improper**

In an action for the rescission of a sale and conveyance of property to trustees for a corporation, which necessarily involved an accounting, and in which a fraudulent conspiracy and misrepresentations of the owner and trustees were alleged, it was error to strike out allegations in the complaint that certain sums were paid by the plaintiff on account of the transaction, including interest to one of the defendants, and expenses of operating the property, and allegations that certain claims were outstanding against the plaintiff for similar other expenses, while the plaintiff believed the false representations made to be true and before discovery of their falsity. [California Farm & Fruit Co. v. Schiappa-Pietra \(Cal. Aug. 19, 1907\)](#), 151 Cal. 732, 91 P. 593, 1907 Cal. LEXIS 489.

In an action on a bond given by an attaching creditor, involving conversion of the property subject to the lien, where the defendant failed to make a direct and positive allegation of the value of the property converted, but his contention that it was not worth more than a certain amount appeared in many parts of his answer, it was error to strike out such allegations on the ground that they were irrelevant and not responsive to the complaint. [Allerton v. King \(Cal. App. Jan. 9, 1929\)](#), 96 Cal. App. 230, 274 P. 90, 1929 Cal. App. LEXIS 873.

In an action for damages arising out of an airplane accident, the court errs in striking, as sham, irrelevant or redundant allegations in the complaint concerning loss of profits through contemplated sale of the airplane. [Johnson v. Central Aviation Corp. \(Cal. App. Mar. 27, 1951\)](#), 103 Cal. App. 2d 102, 229 P.2d 114, 1951 Cal. App. LEXIS 1130.

Property owners suing for damage caused by defendants' wrongful acts in exploding explosive substances in a water well may properly include allegations pertaining to exemplary and punitive damages, where there are allegations that the defendants acted wilfully, unlawfully, and maliciously in doing the acts charged, as against a contention that the allegations pertaining to exemplary and punitive damages are frivolous and sham. [Menzies v. Geophysical Service, Inc. \(Cal. App. Mar. 2, 1953\)](#), 116 Cal. App. 2d 419, 254 P.2d 51, 1953 Cal. App. LEXIS 1082.

#### **📌 14. Appeal and Error: Generally**

Where on a motion to strike, an order striking out a portion of the complaint is made, such order, not being itself appealable, may be reviewed on appeal from the final judgment. [Swain v. Burnette \(Cal. May 28, 1888\)](#), 76 Cal. 299, 18 P. 394, 1888 Cal. LEXIS 879.

In an action by an assignee appointed under proceedings in involuntary insolvency against a partnership, where the motion to strike out parts of the answer in such action specifically quoted all the parts of the answer sought to be stricken out, and the court granted the motion as to all those parts of the answer which attacked the validity of the insolvency proceedings, and denied it otherwise, the order, though imperfect, was not too indefinite to be sustained on appeal. [Riego v. Foster \(Cal. June 21, 1899\)](#), 125 Cal. 178, 57 P. 896, 1899 Cal. LEXIS 822.

In the record upon appeal from an order refusing a motion to strike out certain parts of a complaint as redundant, unnecessary, and irrelevant, which are referred to in the motion by page and line of the pleading, the transcript should identify the matter to which the motion was addressed. [Higgins v. San Diego Sav. Bank \(Cal. July 18, 1900\)](#), 129 Cal. 184, 61 P. 943, 1900 Cal. LEXIS 951.

Where on appeal from a judgment it is sought to review an order striking out parts of the complaint, but it is impossible from the order to determine the specific parts of the complaint thus stricken out, the motion to strike out and the order made thereon referring to certain lines and pages of the complaint, and the complaint being printed in the transcript without any reference to the original paging and lines, an appellate court is not called on to review such order. [Overton v. Noyes \(Cal. Feb. 5, 1918\)](#), 177 Cal. 450, 170 P. 1110, 1918 Cal. LEXIS 621.

On appeal from a judgment based on an order striking out the answer as sham and granting a motion for judgment on the pleadings, it will be assumed that the defendant has abandoned any reliance on the denials contained in its answer where it makes no attempt in its brief to show that any allegation, except one affirmative allegation, raised a material issue on which it was entitled to a trial. [Title Guarantee & Trust Co. v. Fraternal Finance Co. \(Cal. Mar. 21, 1934\)](#), 220 Cal. 362, 30 P.2d 515, 1934 Cal. LEXIS 539.

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 \(Cal. App. 2d Dist. May 29, 1958\)](#), 161 Cal. App. 2d 34, 325 P.2d 1010, 1958 Cal. App. LEXIS 1700.

An order granting a motion to strike a complaint, so as to remove 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 \(Cal. App. 1st Dist. Oct. 25, 1967\)](#), 255 Cal. App. 2d 366, 63 Cal. Rptr. 123, 1967 Cal. App. LEXIS 1284.

#### **📌 15. Appeal and Error: Abuse of Discretion**

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 \(Cal. App. 2d Dist. May 12, 1958\)](#), 160 Cal. App. 2d 321, 325 P.2d 130, 1958 Cal. App. LEXIS 2124.

Court did not abuse its discretion in denying answers to interrogatories asking adverse party to explain defect and misjoinder of parties defendants and in what manner complaint was ambiguous, unintelligible and uncertain, since court was warranted in concluding that interrogatories sought contentions, conclusions or legal arguments instead of facts and may have concluded that objections to defenses previously pleaded should have been made by demurrer or eliminated by motion to strike. [Flora Crane Service, Inc. v. Superior Court of San Francisco \(Cal. App. 1st Dist. June 7, 1965\)](#), 234 Cal. App. 2d 767, 45 Cal. Rptr. 79, 1965 Cal. App. LEXIS 1063.

#### **📌 16. Appeal and Error: Harmless or Prejudicial Error**

While the code does not require notice of a motion to strike, it would seem eminently proper that a defendant should have an opportunity to prepare to meet a motion to strike an answer as sham or irrelevant, and it is reversible error to grant such a motion without notice. [Arata v. Tellurium Gold & Silver Mining Co. \(Cal. June 17, 1884\)](#), 65 Cal. 340, 4 P. 195, 4 P. 344, 1884 Cal. LEXIS 545.

It was not reversible error to refuse to strike out certain parts of the answer as sham, irrelevant, and redundant, where they could have no effect on, and were not necessary to support, the judgment. [Clark v. Olsen \(Cal. June 3, 1893\), 33 P. 274, 1893 Cal. LEXIS 1063.](#)

Plaintiffs were justified in setting forth in their complaint the several acts of the defendant constituting the wrong for which they sought redress, and any possible error in not striking out probative facts contained in the allegations thus made was a technical error, without prejudice to the defendant, and not ground for reversal after the case had been tried on its merits. [Sloane v. Southern C. R. Co. \(Cal. Mar. 23, 1896\), 111 Cal. 668, 44 P. 320, 1896 Cal. LEXIS 637.](#)

Where the records show that the cause was tried on its merits, and that no substantial right could have been affected by the ruling of the trial court in refusing to strike out immaterial matter which should have been stricken out from the complaint as irrelevant, the error will be deemed harmless on appeal. [Higgins v. San Diego Sav. Bank \(Cal. July 18, 1900\), 129 Cal. 184, 61 P. 943, 1900 Cal. LEXIS 951.](#)

Where a defense pleaded in the answer is not shown to be within any one of the categories designated in this section, granting a motion to strike the same constitutes reversible error. [Palmer v. Emanuel \(Cal. App. May 6, 1926\), 77 Cal. App. 772, 247 P. 611, 1926 Cal. App. LEXIS 420.](#)

Where a plaintiff's motion to strike out certain parts of an answer should have been granted in part, but is erroneously not granted, such error is harmless where no possible prejudice results to the plaintiff because no evidence is addressed to the objectionable matters. [Ross v. Sweeters \(Cal. App. Jan. 16, 1932\), 119 Cal. App. 716, 7 P.2d 334, 1932 Cal. App. LEXIS 144.](#)

It is error to hear and determine a plaintiff's purported motion to strike an answer, where no motion for such relief is actually made, even though filing and service of a motion of intention to make such a motion has been made. [Milstein v. Sartain \(Cal. App. Jan. 30, 1943\), 56 Cal. App. 2d 924, 133 P.2d 836, 1943 Cal. App. LEXIS 270.](#)

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. \(Cal. App. 1st Dist. May 20, 1958\), 160 Cal. App. 2d 631, 325 P.2d 228, 1958 Cal. App. LEXIS 2165.](#)

## Research References & Practice Aids

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### Cross References:

Proceedings when motion to strike is granted or denied: [CCP § 472a.](#)

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### Practice Guides

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