

**State of California**

**CODE OF CIVIL PROCEDURE**

**Section 439**

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439. (a) Before filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings. If an amended pleading is filed, the responding party shall meet and confer again with the party who filed the amended pleading before filing a motion for judgment on the pleadings against the amended pleading.

(1) As part of the meet and confer process, the moving party shall identify all of the specific allegations that it believes are subject to judgment and identify with legal support the basis of the claims. The party who filed the pleading shall provide legal support for its position that the pleading is not subject to judgment, or, in the alternative, how the pleading could be amended to cure any claims it is subject to judgment.

(2) The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer. The 30-day extension shall commence from the date the motion for judgment on the pleadings was previously filed, and the moving party shall not be subject to default during the period of the extension. Any further extensions shall be obtained by court order upon a showing of good cause.

(3) The moving party shall file and serve with the motion for judgment on the pleadings a declaration stating either of the following:

(A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings.

(B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith.

(4) A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings.

(b) A party moving for judgment on a pleading that has been amended after a motion for judgment on the pleadings on an earlier version of the pleading was granted shall not move for judgment on any portion of the pleadings on grounds that could have been raised by a motion for judgment on the pleadings as to the earlier version of the pleading.

(c) (1) If a court grants a motion for judgment on the pleadings and grants leave to amend, the court may order a conference of the parties before an amended pleading, or a motion for judgment on an amended pleading, may be filed. If the conference is held, the court shall not preclude a party from filing a motion for judgment on the pleadings and the time to file a motion for judgment on the pleadings shall not begin until after the conference has concluded.

(2) This section does not prohibit the court from ordering a conference on its own motion at any time or prevent a party from requesting that the court order that a conference be held.

(d) This section does not apply to any of the following:

(1) An action in which a party not represented by counsel is incarcerated in a local, state, or federal correctional institution.

(2) A proceeding in forcible entry, forcible detainer, or unlawful detainer.

(3) A special motion brought pursuant to Section 425.16.

(4) A motion brought less than 30 days before trial.

(e) (1) In response to a motion for judgment on the pleadings and before the case is at issue, a pleading shall not be amended more than three times, absent an offer to the trial court of additional facts to be pleaded that, if pleaded, would result in a reasonable possibility that the defect can be cured. The three-amendment limit does not include an amendment made without leave of the court pursuant to Section 472, if the amendment is made before a motion for judgments on the pleadings as to the original pleading is filed.

(2) This section does not affect the rights of a party to amend its pleading or respond to an amended pleading after the case is at issue.

(f) This section does not affect appellate review or the rights of a party pursuant to Section 430.80.

(g) If a motion for judgment on the pleadings is denied and the pleading is not further amended, the moving party preserves its right to appeal after final judgment without filing a further motion for judgment on the pleadings.

(h) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2021, deletes or extends that date.

(Added by Stats. 2017, Ch. 273, Sec. 2. (AB 644) Effective January 1, 2018. Repealed as of January 1, 2021, by its own provisions.)