IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Law and Motion Calendar
Judge: HONORABLE SUSAN GREENBERG
Department 3
400 County Center, Redwood City
Courtroom 2B

Thursday, August 01, 2024 AT 2:00 PM

IF YOU *INTEND TO APPEAR* ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. **EMAIL Dept3@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING, OR**

2. **YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.**

AND

3. **You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).**

Failure to do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by *Zoom*, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

https://sanmateocourt.zoomgov.com/

Meeting ID: 161 828 3335
Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case **Title / Nature of Case**

14:00
LINE: 1
19-CIV-06531 INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA

INS. COMMISSIONER OF THE STATE OF CALIFORNIA	MICHAEL J. STRUMWASSER
CALIFORNIA INSURANCE COMPANY	SHAND S. STEPHENS

MOTION FOR RECONSIDERATION AFTER NO SERVICE BY COURT CLERK OF FINAL STATEMENT OF DECISION AND ORDER AFTER HEARING 08/23/23 AND NO SERVICE OF NOTICE OF ENTRY OF JUDGMENT OF APRIL 05, 2024 BY POLICY HOLDER/MOVANT/PARTY-IN-INTEREST ENVIRONMENT CONTROL

TENTATIVE RULING:

Before the court is Party-in-Interest Environmental Control's (hereinafter movant) motion for reconsideration of this court's April 3, 2024 Final Statement of Decision and Order. The instant motion was filed May 9, 2024. Parties to the underlying action, applicant Insurance Commissioner of the State of California (hereinafter applicant) and respondent, California Insurance Company, a California Corporation, (hereinafter respondent), filed briefs in opposition on July 19, 2024. The motion is DENIED.

Party in Interest Requirement

Pursuant to Code of Civil Procedure section 367 "[e]very action must be prosecuted in the name of the real party in interest, except as otherwise provided by statute." As a general rule, one cannot become a party simply by appearing voluntarily and filing a pleading. "Nevertheless, a person who voluntarily undertakes the prosecution or defense of an action between other parties, or holds himself out to the adverse party as so doing, may be considered a party, especially if the adverse party does not move to strike the pleading or prevent the person from appearing in the action. [footnotes omitted]." (Carr, Cal. Affirmative Def. (2d. ed. July 2023 Update) Requirement that actions be prosecuted by real party in interest, §19.3.) This court's September 10, 2020 order states movant has not provided authority demonstrating their standing to apply to vacate or amend the conservation order in this matter and cited California Insurance code section 1037.

However, even assuming movant satisfied the requirements to appear as a party in interest within the meaning of section 367, the motion would be DENIED for the reasons below.

Motion for Reconsideration

Any party affected by a court order may file a motion for reconsideration under Code of Civil Procedure, section 1008, within 10 days after service upon the party of written notice of entry of the order upon a showing of the existence of new or different facts, circumstances, or law. (Code Civ. Proc. §1008, subd. (a); *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, as modified on denial of reh'g (Oct. 23, 1996).) Here, judgment was entered April 3, 2024 and the instant motion was filed May 9, 2024. Thus, the instant motion is untimely and movant's papers do not present grounds excusing his procedural default. Accordingly, the motion is DENIED.

However, even assuming the motion were properly and timely before the court, the motion would still be denied for failure to meet the burden of showing the existence of new or different facts, circumstances or law. Movants briefing states having placed the same issues it raises here "squarely before this Court by oral argument of Counsel for Environmental Control at the hearing on 8/23/23." (Motion for Reconsideration filed May 9, 2024, page 8.) Thus, the Court having previously heard and considered these grounds, movant fails to meet his burden to demonstrate the existence of new or different facts, circumstances or law for the court to reconsider. Accordingly, the motion is DENIED for this reason as well.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for defendants shall prepare a written order consistent with the court's ruling for the court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

14:00
LINE: 2
21-UDL-00441 M & R PROPERTIES VS. TEENA RODRIGUEZ, ET.AL.

M & R PROPERTIES	TIMOTHY S. O'HARA
TEENA RODRIGUEZ	JOSEPH K. BRAVO

MOTION TO RECLASSIFY CASE AS UNLIMITED (CCP 403040(B)) BY PLAINTIFF M & R PROPERTIES

TENTATIVE RULING:

Plaintiff M & R Properties' Motion to Reclassify Case as Unlimited is DENIED.

When a party files a motion for reclassification after the time allowed for that party to amend the initial pleading, "the court shall grant the motion and enter an order for reclassification only if both of the following conditions are satisfied: (1) The case is incorrectly classified. (2) The moving party shows good cause for not seeking reclassification earlier." (Code of Civ. Proc., § 403.040, subd. (b).)

The first condition is met here. Despite the fact that the FAC only seeks damages in an unspecified amount, the FAC alleges that M&R has suffered damages in the amount of $51,282.80, above the jurisdictional limit. (See Code of Civ. Proc., §§ 85–86.)

However, the second condition is not met. M&R offers the declaration of its counsel, who states that he "mistakenly or inadvertently failed to seek an order to reclassify the case from limited to unlimited" and "did not discover this mistake until now." (May 14, 2024 Declaration of Timothy S. O'Hara.) While there is no appellate authority addressing what constitutes good cause in this context, the statute is best construed as requiring a showing of an acceptable excuse.

"Good cause is often the burden placed on a litigant … to show why a request should be granted" and it means "[a] legally sufficient reason." (Black's Law Dict. (9th ed. 2009) p. 251.) "The concept of good cause should not be enshrined in legal formalism; it calls for a factual exposition of a reasonable ground for the sought order. The good cause may be equated to a good reason for a party's failure to perform that specific requirement from which he seeks to be excused." (*Waters v. Superior Court of Los Angeles County* (1962) 58 Cal.2d 885, 893.)

The "good cause" to be relieved of a time restriction—as it appears in other statutes—has been interpreted to require an excuse with adequate evidence that

the party requesting relief has been diligent, is without fault, or has acted with relatively benign negligence relative to the prejudice relief from the restriction would cause. (See, e.g., *People v. Accredited Surety & Casualty Co., Inc.* (2006) 137 Cal.App.4th 1349 [good cause for relief from bond forfeiture under Pen. Code, § 1305.4].)

While M&R's counsel may not have discovered that M&R had not asked for the case to be reclassified—for which a box is conveniently provided on the form complaint—or that M&R made no attempt to pay the reclassification fee "until now," this is only *a* cause and not *good* cause. To hold otherwise would mean that the requisite good cause could be shown simply by declaring innocence. But, had the Legislature intended that to be the standard, it would have written the statute to only require an absence of bad faith. Because it did not, it indicated that an affirmative showing of diligence—including diligence before discovery of a purported mistake—or an adequate explanation for any lack of diligence is required before the Court may grant relief. That is, to show good cause under section 403.040, subdivision (b) based on a mistake or on inadvertence, the moving party should make a showing similar to that required under Code of Civil Procedure section 473.

That showing is not present here, even were the Court to consider the declaration mentioned above. However, the unsworn declaration does not include the date of execution as required and thus cannot constitute evidence of any of tge matters therein. (See Code of Civ. Proc., § 2015.5.) Accordingly, good cause has not been shown, and the motion is therefore denied.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

14:00
LINE: 3
23-CIV-03279 SONIA LOPEZ BILAFER, ET.AL. VS. DAVID CARLO DOSSOLA, ET.AL

PAULINE BILAFER	DANIEL J. RAFII
DAVID CARLO DOSSOLA	MELISSA RAFFALOW

DEMURRER TO PLAINTIFF'S COMPLAINT BY DEFENDANT DAVID CARLO DOSSOLA
TENTATIVE RULING:

Defendant's Demurrer to Plaintiffs' Complaint is SUSTAINED with leave to amend pursuant to Cal. Code of Civil Procedure Section 430.10(e).

This negligence action arises from a motor vehicle accident that occurred on or about July 14, 2021 at R-84 approximately 47 feet of south Southgate drive in Woodside, CA when Defendant allegedly negligently operated his vehicle such that is collided with Plaintiffs' vehicle.

Statute of Limitations

Where a complaint shows on its face that a cause of action is barred by the applicable statute of limitations, it is subject to demurrer. *Sirott v. Latts*, (1992) 6 Cal. App. 4th 923, 928. However, it is not sufficient for a complaint to show only that an action may be barred. SLPR, L.L.C. v San Diego Unified Port Dist. (2020) 49 CA5th 284, 306. Ambiguity or uncertainty regarding the date of the alleged incident triggering the running of the statute of limitations results in a question of fact that is appropriately resolved through a motion for summary judgment or trial, but not by demurrer. *Childs v State* (1983) 144 CA3d 155, 160–163.

Here, Plaintiffs' Complaint alleges:

> On or about July 14, 2021, at the Subject Location, the Defendants, and each of them, so negligently owned, entrusted, managed, maintained, drove, and operated Defendant's Vehicle so as to cause Defendant's Vehicle to collide with the Plaintiffs' Vehicle, proximately causing those injuries and damages to the Plaintiffs as hereinafter described.
>
> Complaint, ¶13.

The sole cause of action for personal injury caused by Negligence is governed by a two year statute of limitations pursuant to Cal. Code of Civil Procedure Section

335.1. The Complaint was filed July 19, 2023, two years and five days after July 14, 2021. The allegation that the incident occurred "[o]n or about" that date creates potential ambiguity about the date the statute began to run, but Plaintiffs do not appear to contend that the incident in fact occurred on any date other than July 14, 2021 exactly, so there is no true ambiguity. See Opp., generally.

There is also uncertainty as to the age of each Plaintiff in the action, because the Complaint does not plead their respective ages at the time of filing or the time of the accident. See Complaint, ¶¶1-2. When, at the time the plaintiff's cause of action accrues, the plaintiff is a minor or lacks legal capacity to make decisions, the time of this disability is not part of the time limited for commencing the action, resulting in a tolling of the statute of limitations during the time that a plaintiff is a minor. Cal. Code of Civil Procedure Section 352(a). Again, however, Plaintiffs here do not argue that either of them was a minor at the time the cause of action for negligence accrued, so such tolling does not appear applicable. See Opp., generally.

The Complaint therefore appears on its face to be barred by the statute of limitations. See Complaint, ¶¶1-2.

Relief for Excusable Neglect

Plaintiffs' counsel requests relief from dismissal of the action pursuant to Cal. Code of Civil Procedure section 437(b) based on his excusable neglect in relying on BFRM Legal Support Services, a certified electronic filing service provider, to timely file the Complaint. Opp. 6:24-27. Plaintiffs do not provide any authority for the proposition that Section 437(b) can be used preemptively to afford relief as to a failure to file a complaint within the statute of limitations. A demurrer has been held to effectively be a dismissal motion for purposes of the mandatory provision of Section 437(b). *Pagnini v. Union Bank, N.A.*, (2018) 28 Cal.App.5th 298, 302. However, neither the Graham Declaration nor the Luna Declaration in support of Plaintiffs' Opposition meets the requirements to trigger the mandatory provision of Section 437(b) because the Luna Decl. is not an attorney affidavit, and neither declaration attests to counsel's mistake, inadvertence, surprise, or excusable neglect. Regardless, neither mandatory nor discretionary relief is available under Section 437(b) for failure to comply with the statute of limitations. *Castro v. Sacramento County Fire Protection Dist.,* (1996) 47 C.A.4th 927; *Kupka v. Board of Administration*, (1981) 122 Cal.App.3d 791; *Hanooka v. Pivko*, (1994) 22 Cal.App.4th 1553.

Plaintiffs are granted leave to file a First Amended Complaint to allege any applicable tolling of the statute of limitations within ten days of notice of entry of this order.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.

14:00
LINE: 4

23-CIV-03723 ROXANNE KENNEDY VS. SPACIAL, LLC, ET.AL.

ROXANNE KENNEDY	CHRISTOPHER P. EPSHA
SPACIAL, LLC	DAVID N. SHAVER

MOTION TO BE RELIEVED AS COUNSEL BY ATTORNEY CATHERINE DELCIN AND CHRISTOPHER EPSHA, DCG FOR PLAINTIFF ROXANNE KENNEDY

TENTATIVE RULING:

The unopposed motion of Catherine Delcin, Christopher Epsha and Delcin Consulting Group to be relieved as counsel of record for plaintiff Catherine Kennedy is denied without prejudice. Counsel have not provided sufficient proof that plaintiff and all other parties received proper notice of the hearing.

The notice of motion indicates the hearing will take place at 800 North Humboldt Street in San Mateo. However, the correct address for the court is 400 County Center in Redwood City.

In addition, the POS indicates plaintiff was served with the moving papers electronically. California Rules of Court, rule 3.1362(d)(2) states that if the notice of hearing is served on the client by electronic service, it must be accompanied by a declaration stating that the service address is the client's current address. Although the POS contains the conclusory assertion that the address is current, the rule states that current means the address was confirmed within 30 days before the filing of the motion. There are no facts to indicate that plaintiff's electronic address was confirmed within 30 days before filing the motion.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter the Court's minute order shall be the order of the court.

14:00
LINE: 5

23-CIV-04358 DONALD V. RYAN VS. DOUGLAS J. RYAN, ET.AL.

DONALD V. RYAN	DAVID M. AUSTIN
DOUGLAS J. RYAN	THOMAS C. TAGLIARINI

MOTION FOR INTERLOCUTORY JUDGMENT OF PARTITION, OR IN THE ALTERNATIVE, INTERIM ORDER OF SALE BY PLAINTIFF DONALD V. RYAN

TENTATIVE RULING:

This Motion has been continued to 10/17/24 at 2:00 pm.

14:00
LINE: 6
23-CIV-04986 KELILYN MCKEEVER, ET.AL. VS. MAHER FAKHOURI, ET.AL.

KELILYN MCKEEVER	MICHAEL CHENG
MAHER FAKHOURI	KYLE L. SCHRINER

MOTION FOR LEAVE TO SERVE SUMMONS BY PUBLICATION BY PLAINTIFFS KELILYN MCKEEVER AND DEVIN MCKEEVER
TENTATIVE RULING:

Code Civ. Proc. §§ 415.10 et seq. authorizes four methods of service of summons. The last of these is by publication of summons in a newspaper of general circulation. (Code Civ. Proc. § 415.50.) Unlike the other methods, service by publication requires a court order before plaintiff may attempt it. (*Ibid.*) Code Civ. Proc. § 415.50 is strictly construed. (*Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1034.) Service by publication is to be utilized only as a last resort, because it implicates constitutional principles of due process of law and is unlikely to actually put a defendant on notice that he or she is being sued. (*Bd. of Trustees of Leland Stanford Jr. University v. Ham* (2013) 216 Cal.App.4th 330, 338 [citing *Watts v. Crawford* (1995) 34 Cal.App.4th 740, 749 fn. 5].)

Plaintiff's attorney must prepare a declaration showing that reasonable attempts have been made to serve the defendant in some other authorized manner (including service by mail if the address is known). (Code Civ. Proc. § 415.50(a); *Transamerica Title Ins. Co. v. Hendrix* (1995) 34 Cal.App.4th 740, 745.) The declaration must also show reasonable diligence denoting a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney. (*Watts v. Crawford* (1995) 10 Cal.4th 743, 749.) Reasonable diligence requires a number of honest attempts to learn defendant's whereabouts or his or her address by inquiry of relatives or investigation of appropriate city and phone directories. (*Id.* at 749, fn. 5.) Whether the plaintiff exercised the diligence necessary to justify resort to service by publication depends on the facts of the case. (*Rios v. Singh* (2021) 65 Cal.App.5th 871, 880.) The question is whether the plaintiff took the steps a reasonable person who truly desired to give notice of the action would have taken under the circumstances. (*Ibid.*)

Here, Plaintiff avers that Defendant Lahlouh's address is known. (Descamps Decl. ¶¶ 6, 7.) The Declaration of Non-Service and Declaration of Due Diligence detail the process servers' unsuccessful attempts to serve the defendant personally, which do show the requisite diligence as to personal service and, presumably, substituted

service. However, neither the Descamps declaration or the process servers' declarations mention any attempt to serve Defendant Lahlouh by mail. Without demonstrating that an unsuccessful attempt was first made to serve by mail (CCP § 415.30), Plaintiff has not shown enough for the Court to conclude that Defendant cannot with reasonable diligence be served in another manner prescribed by the Code, thus necessitating service by publication. (*See Giorgio v. Synergy Management Group, LLC* (2014) 231 Cal.App.4th 241, 249 [discussing sufficiency of service efforts]; *Transamerica Title Ins. Co. v. Hendrix* (1995) 34 Cal.App.4th 740, 745 [concluding that where defendant's address was known, even though it was a post office address rather than a home address, it was error to conclude that service by mail was not required before ordering notice by publication].)

Therefore, the Court DENIES the motion to serve by publication without prejudice. Note that if Plaintiff later seeks to serve by publication, Plaintiff may bring an application ex parte rather than via noticed motion. (*Rios v. Singh* (2021) 65 Cal.App.5th 871, 883.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Plaintiff shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.
The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.

14:00
LINE: 7

24-UDL-00183 BRISBANE BAYSHORE PROPERTIES, INC. VS. MAK HOME STAGING, LLC, ET.AL.

BRISBANE BAYSHORE PROPERTIES, INC. SPENCER P. SCHEER
MAK HOME STAGING, LLC

MOTION TO SET ASIDE DISMISSAL BY PLAINTIFF BRSIBANE BAYSHORE PROPERTIES, INC.

TENTATIVE RULING:

This motion is dropped from calendar. Notice of Withdrawal was filed by Plaintiff on 07/25/24.

14:00
LINE: 8
CIV537691 AMBER LAUREL BAPTISTE VS. MICHAEL LEWIS GOGUEN

AMBER LAUREL BAPTISTE	PRO/PER
MICHAEL LEWIS GOGUEN	DIANE DOOLITTLE

ORDER TO SHOW CAUSE RE: CONTEMPT FOR PLAINTIFF AMBER BAPTISTE
TENTATIVE RULING:

The Order to Show Cause ("OSC") for Contempt by Defendant/Cross-Complainant Michael Goguen ("Cross-Complainant") against Plaintiff/Cross-Defendant Amber Laurel Baptiste ("Cross-Defendant") is DROPPED based on failure to file a proof of service showing that Cross-Defendant was properly served with the OSC and Affidavit. Both the OSC and affidavit must ordinarily be served on the respondent in a manner authorized by service of summons. (*Cedars-Sinai Imaging Med. Group v. Sup.Ct.* (2000) 83 Cal.App.4th 1281, 1286.) Without proof of such service, the court lacks jurisdiction to proceed as to the OSC. (*Id.* at pp. 1286–1287.)

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, Cross-Complainant's counsel shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The Court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.