

**1. DeLOIA v. CEFALU, ET AL., 23CV2066****Motion for Protective Order**

Before the court is defendant John Cefalu's ("defendant") motion for a protective order staying his deposition for two months, until defendant has a follow-up visit with his neurologist.

Defense counsel and defendant Jonathon "Joby" Cefalu both submitted declarations stating that defendant John Cefalu, an 89-year-old male, has suffered extreme cognitive decline in the past five months due to stress. According to the declarations, defendant's medical providers administered some cognitive tests, which defendant failed. As a result, the medical providers have allegedly recommended that defendant not participate in legal proceedings for at least the next two months until the providers can confirm his diagnosis and/or stabilize his stress responses.

Plaintiffs object to most of the statements in the declarations on the grounds of hearsay, improper opinion, and authentication. As it relates to the declaration of Alexis Holmes, the court sustains plaintiffs' Objection Numbers 1 (in part), 2, 3, and 4 on hearsay grounds; and overrules Objection Number 1 (in part). As it relates to the declaration of defendant Joby Cefalu, the court sustains Objection Numbers 2, 3, 4, 5 (in part), 6, 7, and 8 on hearsay grounds; and overrules Objection Numbers 1 and 5 (in part).

The court will continue the matter to September 6, 2024, so that defendant may obtain and submit declaration(s) from his medical provider(s) regarding his cognitive abilities.

**TENTATIVE RULING # 1: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, SEPTEMBER 6, 2024, IN DEPARTMENT FOUR SO THAT DEFENDANT JOHN CEFALU MAY OBTAIN AND SUBMIT SUPPORTING DECLARATION(S) FROM HIS MEDICAL PROVIDER(S) REGARDING HIS COGNITIVE ABILITIES.**

**2. McCLELLAN v. BRUDER, 24CV0706****(A) Plaintiff's Motion to Strike****(B) Plaintiff's Motion to Extend Time to File Responsive Pleading****Plaintiff's Motion to Strike**

Before the court is plaintiff's July 25, 2024, motion to strike portions of "Defendant's Complaint." However, defendant has not filed a cross-complaint in this matter. Therefore, the issue is moot.

**Plaintiff's Motion to Extend Time to File Responsive Pleading**

On July 25, 2024, plaintiff filed a "motion for extension of time to file responsive pleading." However, his memorandum of points and authorities indicates that he moves the court "for an extension of time to file amended complaint, motion to compel discovery responses (CCP §2030.300). Also case management statement." The court notes that, presently, no responsive pleading is due from plaintiff. Therefore, the motion is moot.

**TENTATIVE RULING # 2: THE MOTIONS ARE MOOT. THE COURT WILL NOT HEAR ORAL ARGUMENT. (*DIAZ-BARBA v. SUPERIOR COURT* (2015) 236 CAL.APP.4TH 1470, 1490.)**

**3. MATTER OF DRUM, 24CV1457**

**OSC Re: Name Change**

**TENTATIVE RULING # 3: PETITION IS GRANTED AS REQUESTED.**

**4. WILSON v. MUCCILLO, 23CV0451****Motion for Reconsideration**

On June 28, 2024, the court granted defendant's motion for summary judgment. Before the court is plaintiff's second motion for reconsideration of that order pursuant to Code of Civil Procedure sections 473, subdivision (b) and 1008, subdivision (a).

Plaintiff claims the court did not allow her to complete her oral argument at the June 28, 2024, hearing on this matter. The court finds that plaintiff has not specified any new or different facts, circumstance or law justifying reconsideration. The motion is denied.

**TENTATIVE RULING # 4: THE MOTION FOR RECONSIDERATION IS DENIED. THE COURT WILL NOT HEAR ORAL ARGUMENT. (*DIAZ-BARBA v. SUPERIOR COURT (2015) 236 CAL.APP.4TH 1470, 1490.*)**

**5. FLANAGAN v. ROCCA, 23CV0768****(A) Plaintiffs' Motion to Strike Defendant's Fourth-Amended Cross-Complaint****(B) Defendant's Motion to Reclassify the Action as a Small Claims Action****Plaintiffs' Motion to Strike**

Before the court is plaintiffs' unopposed motion to strike defendant's Fourth-Amended Cross-Complaint on the grounds that (1) defendant failed to timely file her amended pleading after the expiration of time following plaintiffs' previous demurrer; and (2) defendant alleges facts in her Fourth-Amended Cross-Complaint that go beyond the permissible scope of amendment.

**1. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivisions (d), (e), and (h), the court grants plaintiffs' unopposed request for judicial notice of: (1) defendant's Fourth-Amended Cross-Complaint; (2) the court's April 23, 2024, order regarding plaintiffs' demurrer to defendant's Third-Amended Cross-Complaint; (3) the adopted portions of the court's tentative ruling issued April 11, 2024; (4) California Rules of Court, Rule 3.1320, subdivision (g); (5) the register of actions in the above-entitled case; and (6) the fact that June 7, 2024, is 35 calendar days after May 3, 2024.

**2. Discussion**

On April 23, 2024, the court sustained plaintiffs' demurrer to defendant's first cause of action for breach of contract in the Third-Amended Complaint with leave to amend; and sustained plaintiffs' demurrer to defendant's second cause of action to foreclose on mechanic's lien in the Third-Amended Complaint without leave to amend. The court's order was silent as to the deadline for defendant to file an amended pleading. Therefore, the default rule of 10 days applies. (Cal. Rules of Ct., rule 3.1320, subd. (g).)

Plaintiffs' counsel declares that she served notice of the order upon defendant via email on May 3, 2024. (Holmes Decl., ¶ 4.) Thus, defendant's deadline to file an amended

pleading was May 15, 2024. (Cal. Rules of Ct., rule 3.1320, subd. (g); Code Civ. Proc., § 1013, subd. (e).) Defendant did not file the Fourth-Amended Complaint until June 7, 2024.

The court declines to strike the entire Fourth-Amended Complaint. However, the court will strike the 18 pages of new material labelled as “Verified Answer Back.” Therefore, the motion to strike is sustained in part and overruled in part.

**Defendant’s Motion to Reclassify the Action as a Small Claims Action**

Pursuant to Code of Civil Procedure section 396, defendant moves to reclassify jurisdiction from limited civil to small claims. However, a defendant’s motion for reclassification must be filed within the time allowed for filing a response to the complaint. (Code Civ. Proc., § 403.040, subd. (a).) Therefore, defendant’s motion is untimely.

Additionally, defendant has not shown that the case is classified incorrectly. Code of Civil Procedure section 86 lists civil cases that are classified as limited civil cases, including an action to enjoin a lien arising out of the mechanic’s lien statute (Code Civ. Proc., § 86, subd. (a)(6)), and an action to issue a temporary restraining order or preliminary injunction. (*Id.*, subd. (a)(8).)

Based on the above, the motion for reclassification is denied.

**TENTATIVE RULING # 5: THE MOTION TO STRIKE IS SUSTAINED IN PART AND OVERRULED IN PART. THE COURT STRIKES THE 18 PAGES OF NEW MATERIAL LABELLED AS “VERIFIED ANSWER BACK” IN DEFENDANT’S FOURTH-AMENDED CROSS-COMPLAINT.**

**THE MOTION FOR RECLASSIFICATION IS DENIED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT**

AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

**6. FLANAGAN v. ROCCA, 24CV0490****Respondent's Motion to Reclassify the Action as a Small Claims Action**

Pursuant to Code of Civil Procedure section 396, respondent moves to reclassify jurisdiction from unlimited civil<sup>1</sup> to small claims. However, on June 10, 2024, the court ordered respondent's claim of mechanics lien dated May 11, 2023, expired and unenforceable as a matter of law. Therefore, the instant motion is moot.

**TENTATIVE RULING # 6: THE MOTION IS MOOT. THE COURT WILL NOT HEAR ORAL ARGUMENT. (*DIAZ-BARBA v. SUPERIOR COURT* (2015) 236 CAL.APP.4TH 1470, 1490.)**

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<sup>1</sup> Petitioners state that they inadvertently designated this case as unlimited on the civil case cover sheet. Instead, it should be limited civil.