

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

Law and Motion Calendar  
Judge: HONORABLE RICHARD H. DUBOIS  
Department 16

400 County Center, Redwood City  
Courtroom 7A

Thursday, August 9, 2018

**NOTICE TO ALL COUNSEL**

Until further order of the Court, no endorsed-filed "courtesy copy" of pleadings is required to be provided to the Law and Motion Department.

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

1. YOU MUST CALL (650) 261-5019 BEFORE 4:00 P.M. TO INFORM THE COURT OF YOUR INTENT TO APPEAR.
2. 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 both items 1 and 2 will result in no oral presentation.

**Notifying CourtCall with your intent to appear is not an alternative to notifying the court.**

All Counsel are reminded to comply with California Rule of Court 3.1110. The Court will expect all exhibits to be tabbed accordingly.

Case

Title / Nature of Case

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9:00

LINE: 1

16-CIV-03005 AHLAM ALKHATEEB VS. MELANIE M. HILDEBRAND, ET AL.

AHLAM ALKHATEEB  
MELANIE M. HILDEBRAND

IKE M. KALUDI  
ALISON M. CRANE

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DEFENDANT'S MOTION TO COMPEL FURTHER RESPONSES; AND FOR AN AWARD  
OF SANCTIONS PURSUANT TO CODE OF CIVIL PROCEDURE SECTIONS 2023.010 AND  
2023.020

**TENTATIVE RULING:**

**This matter is dropped from calendar at the request of the moving  
party.**

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LINE: 2

17-CIV-03600 QIAN & CO., LLC VS. LUXEBABY, LLC, ET AL.

QIAN & CO., LLC  
LUXEBABY, LLC

DAVID W. TATE  
JARED L. KOPEL

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JARED L. KOPEL'S MOTION TO BE RELIEVED AS COUNSEL LUXEBABY LLC.

**TENTATIVE RULING:**

Attorney Jared Kopel's motion to be relieved as counsel for defendant Luxebaby, LLC. is GRANTED

In this case, counsel has used all of the required forms, he has provided proof that they were served in compliance with CRC 3.1362(d) and his declaration provides a factual basis for withdrawal. Although trial is set to begin September 10, 2018, counsel has not been actively involved in the case and this appears to be at the client's request.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 3

17-CIV-03600 QIAN & CO., LLC VS. LUXEBABY, LLC, ET AL.

QIAN & CO., LLC  
LUXEBABY, LLC

DAVID W. TATE  
JARED L. KOPEL

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JARED L. KOPEL'S MOTION TO BE RELIEVED AS COUNSEL FOR LUXEBABY INC.

**TENTATIVE RULING:**

Attorney Jared Kopel's motion to be relieved as counsel for defendant Luxebaby INC. is GRANTED

In this case, counsel has used all of the required forms, he has provided proof that they were served in compliance with CRC 3.1362(d) and his declaration provides a factual basis for withdrawal. Although trial is set to begin September 10, 2018, counsel has not been actively involved in the case and this appears to be at the client's request.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 4

17-CIV-03600 QIAN & CO., LLC VS. LUXEBABY, LLC, ET AL.

QIAN & CO., LLC  
LUXEBABY, LLC

DAVID W. TATE  
JARED L. KOPEL

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JARED L. KOPEL'S MOTION TO BE RELIEVED AS COUNSEL FOR LINDA LEE

**TENTATIVE RULING:**

Attorney Jared Kopel's motion to be relieved as counsel for defendant Debra Lee is GRANTED

In this case, counsel has used all of the required forms, he has provided proof that they were served in compliance with CRC 3.1362(d) and his declaration provides a factual basis for withdrawal. Although trial is set to begin September 10, 2018, counsel has not been actively involved in the case and this appears to be at the client's request.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, ATTORNEY is directed to prepare, circulate, and submit a written order on the appropriate judicial council form for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 5

17-CIV-04951 YOSELIN YOSEFINA MEDINA VS. CASTANO ELEMENTARY SCHOOL, ET AL.

YOSELIN YOSEFINA MEDINA  
CASTANO ELEMENTARY SCHOOL

PRO/PER  
MARK E. DAVIS

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DEFENDANTS' DEMURRER TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR DAMAGES

**TENTATIVE RULING:**

The Demurrer of Defendants Ravenswood City School District and Castano Elementary School ("Defendants") to the Second Amended Complaint of Plaintiffs Yoselin Yosefina Medina and Edgar Franco Medina ("Plaintiffs") is SUSTAINED WITHOUT LEAVE TO AMEND.

Plaintiffs fail to allege compliance with the Government Claims Act. The court sustained Defendants' prior demurrer to the First Amended Complaint on this ground, and gave Plaintiffs leave to amend. In the Second Amended Complaint, Plaintiffs still fail to complete paragraph 9 of the Second Amended Complaint by alleging that they complied with the Government Claims Act by filing a claim before bringing this action, or that Plaintiffs are excused from such compliance. (See Second Amended Complaint, para. 9; see also Gov. Code §§ 905, 911.2, 911.4.) Furthermore, while Plaintiffs attach a September 21, 2017 letter from the Santa Clara County Board of Education, this letter pertains to an Interdistrict Attendance Appeal, not a claim by Plaintiffs for money or damages. Finally, Plaintiffs have not opposed this demurrer, and therefore have not established that they will be able to amend to allege such acts.

Additionally, even if Plaintiffs could allege compliance with the Government Claims Act, Plaintiffs still have not identified a statute under which Defendants are liable for Plaintiffs' injuries. (See Gov. Code § 815(a).)

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, DEMURRING PARTY is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 6

17-CIV-05210 CREDITORS ADJUSTMENT BUREAU, INC. VS. PKM BUILDERS,  
INC., ET AL.

CREDITORS ADJUSTMENT BUREAU, INC  
PKM BUILDERS, INC.

KENNETH J. FREED

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PLAINTIFF'S MOTION FOR ORDER VACATING AND SETTING ASIDE DISMISSAL  
**TENTATIVE RULING:**

The unopposed motion to set aside the dismissal is GRANTED.

CCP §473(b) gives the court the discretion to relieve a party from a judgment, dismissal or order taken against him as a result of his or her mistake, inadvertence, surprise or excusable neglect. In this case, the dismissal was not entered against plaintiff. However, the declaration of Kenneth Freed states that plaintiff never intended to dismiss the entire action. Plaintiff inadvertently submitted a request for dismissal of the entire action when plaintiff only intended to dismiss the DOE defendants.

As a result, it appears the dismissal which was signed by Freed, was entered without plaintiff's consent. For that reason, it should be set aside.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, moving party is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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9:00

LINE: 7

17-CIV-05604 CHARLES COLLETTI VS. CARRINGTON FORECLOSURE SERVICES,  
LLC, ET AL.

CHARLES COLLETTI  
CARRINGTON FORECLOSURE SERVICES, LLC

JACK TER-SAAKYAN  
BRIAN A. PAINO

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DEFENDANTS CARRINGTON MORTGAGE SERVICES, LLC AND CARRINGTON  
FORECLOSURE SERVICES, LLC'S MOTION FOR ENTRY OF JUDGMENT

**TENTATIVE RULING:**

**This motion is dropped from calendar at the request of the moving party. A dismissal of the entire action has been filed.**

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9:00

LINE: 8

17-CLJ-04439 LISA FERRERAS VS. CLM TRANSPORTATION, LLC, ET AL.

LISA FERRERAS  
CLM TRANSPORTATION, LLC

MILA LOGVIN  
PAUL FIFE

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LISA FERRERAS MOTION TO RECLASSIFY THIS LIMITED JURISDICTION CASE INTO UNLIMITED JURISDICTION

**TENTATIVE RULING:**

Plaintiff Lisa Ferreras' Motion to Reclassify Case into Unlimited Jurisdiction is GRANTED. Code Civ. Proc. § 403.040(b).

From the evidence and argument presented, it does appear this case has been improperly classified. This dispute arises from what appears to have been a relatively minor automobile collision that caused about \$750 in property damage to Plaintiff's bumper. Although the exact amount is disputed, it appears Plaintiff's claimed medical specials to date are in the area of \$9,000. There is a dispute as to liability as between the parties.

CCP 403.040(b) states:

(b) If a party files a motion for reclassification after the time for that party to amend that party's initial pleading or to respond to a complaint, cross-complaint, or other 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.

CCP 85 states in part that "amount in controversy" means the amount of the demand, or the recovery sought.

In this case, the amount in controversy is not to be resolved by comparing both parties' arguments as to value or liability. It is to be judged by the demand of the plaintiff. Here, a demand in excess of \$25,000 is not "out of the ballpark". Therefore, the case is incorrectly classified.

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Plaintiff retained a new attorney about two months ago. The new attorney discovered that there were more medical expenses than previously realized, perhaps more general damages than previously realized, and the case was potentially valued at over \$25,000. The court finds this good cause for not seeking reclassification earlier.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 9

CIV464944 LORAIN WONG, ET AL. VS. RICHARD TOM

KENDALL NG  
RICHARD TOM

KATHRYN DIEMER  
RUSSELL A. ROBINSON

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RICHARD TOM'S MOTION TO QUASH ORDER FOR EXAMINATION AND FOR PROTECTIVE ORDER, AND REQUEST FOR SANCTIONS FROM PLAINTIFFS AND THEIR COUNSEL OF RECORD

**TENTATIVE RULING:**

Defendant RICHARD TOM's Motion to Quash is dropped from calendar as MOOT. The Court's records indicate that Marc Weissman's examination went forward as scheduled on July 9, 2018.

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to Rule 3.1308(a)(1), adopted by Local Rule 3.10, effective immediately, and no formal order pursuant to Rule 3.1312 or any other notice is required as the tentative ruling affords sufficient notice to the parties.

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9:00

LINE: 10

CIV509729 MING-HSIANG KAO VS. JOY HOLIDAY, ET AL.

MING-HSIANG KAO  
JOY EXPRESS, INC.

ROBERTO RIPAMONTI  
BRIAN EDWARD SORIANO

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JOY HOLIDAY, JOY EXPRESS, INC., JESSY LIN & HARRY CHEN'S MOTION TO  
VACATE JUDGMENT

**TENTATIVE RULING:**

Defendants JOY HOLIDAY, JOY EXPRESS, INC., JESSY LIN, HARRY CHEN's (collectively "Defendants") motion to vacate judgment is DENIED. The Temporary Restraining Order, issued and filed on June 25, 2018, is extinguished.

The judgment entered pertains only to appellate fees and costs, and the Court retains jurisdiction on the remanded issues. (*Kao v. Holiday* (2017) 12 Cal.App.5th 947, 963 ("The matter is remanded to the trial court for entry of judgment in favor of Kao on his statutory wage claims, consistent with the views expressed in this opinion. On remand, the court shall assess unpaid wages and overtime pay, damages for failing to provide itemized wage statements, waiting time penalties, prejudgment interest, costs of suit and reasonable attorney fees. (Lab. Code, §§ 203, subd. (a), 226, subd. (e), 1194, subd. (a).)") ("*Kao*").)

Judgment for appellate fees and costs was properly entered following the court granting Plaintiff's Motion for Attorney Fees and Costs on Appeal, issued on October 27, 2017 ("10/27 Order"). (See Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (Rutter, Jun. 2018 Update) ¶ 9:344.22.)

This motion is a collateral attack and an improper attempt at reconsideration of the 10/27/17 Order. In opposing the underlying motion, Defendants never raised the argument that appellate fees and costs were not recoverable against defendants JOY EXPRESS, INC., JESSY LIN, HARRY CHEN. Defendants conceded the opposite - that Plaintiff was entitled to recovery against Defendants appellate fees and costs.

Defendant [*sic*] is the prevailing party on appeal and is entitled to fees and costs for that appeal. *This point is not in dispute.* However, *defendants* do challenge the amount of fees claimed and the hours expended by Kao's attorneys on appeal. They seek \$90,900 in fees based on a claim of 181.8 billable hours spent at a rate of \$500/hr. Furthermore,

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plaintiff's counsel seeks a 1.5 multiplier based on the "complexity of the case" and the "novel issues" presented; bringing the total amount of fees requested to \$136,350.00.

(Opp. to Pl. Motion for Fees and Costs, filed Oct.16, 2017, p. 3:7-12.) Although Defendants refers to "Defendant" being the prevailing party on appeal, it is apparent this is a scrivener's error and Defendants meant Plaintiff. Defendants only argued that the appellate fees and costs sought were unreasonable on three grounds: (1) Plaintiff's claim regarding the complexity of the appeal was overstated (*id.* at p. 3:20 - 5:14); (2) Plaintiff sought fees for an unreasonable amount of time (*id.* at p. 5:15 - 6:18); (3) Plaintiff counsel's hourly rates are unreasonable (*id.* at p. 6:19 - 7:2.)

Defendants cannot now raise this argument for the first time in this motion to vacate, and it is waived. And to the extent this is a motion for reconsideration, defendants have not demonstrated any "new or different facts, circumstances or law" than those before the court at the time of the original ruling." (Code Civ. Proc. § 1008, subd. (a); Weil & Brown, *supra*, at ¶ 9:328.)

Even if the court were to consider vacating judgment of appellate fees and costs, it would be a futile act as it would not disturb the 10/27 Order against Defendants. (See *Reverend Mother Pauline v. Bray* (1959) 168 Cal.App.2d 384, 386-387 ("It would have been a futile act for the court to have granted plaintiffs' motion to vacate and annul the judgment of dismissal and the precedent order sustaining defendant's demurrer without leave to amend. That would merely have reinstated the complaint which, as we have said, did not state a cause of action and could not have been amended to state one.").)

Lastly, the First District did not limit recovery of appellate fee and costs to defendant Joy Holiday. "Appellant Kao shall recover costs incurred on appeal upon timely application in the trial court. (Cal. Rules of Court, rule 8.278.)" (*Kao, supra*, 12 Cal.App.5th at p. 963.)

If the tentative ruling is uncontested, it shall become the order of the Court, pursuant to CRC Rule 3.1308(a)(1), adopted by Local Rule 3.10. If the tentative ruling is uncontested, Plaintiff is directed to prepare, circulate, and submit a written order reflecting this Court's ruling verbatim for the Court's signature, consistent with the requirements of CRC Rule 3.1312. The proposed order is to be submitted directly to Judge Richard H. DuBois, Department 16.

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