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Clerk of the Superior Court
By T. Automation ,Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, HALL OF JUSTICE

AMY SHERLOCK, an individual and on
behalf of her minor children, T.S. and S.S.,
ANDREW FLORES, an individual;

Plaintiffs,

vs.

GINA M. AUSTIN, an individual; AUSTIN
LEGALGROUP, a professional corporation,
LARRY GERACI, an individual, REBECCA
BERRY, an individual; JESSICA
MCELFRESH, an individual; SALAM
RAZUKI, an individual; NINUS MALAN, an
individual; FINCH, THORTON, AND
BARID, a limited liability partnership;
ABHAY SCHWEITZER, an individual and
dba TECHNE; JAMES (AKA JIM)
BARTELL, an individual; NATALIE
TRANG-MY NGUYEN, an individual,
AARON MAGAGNA, an individual;
BRADFORD HARCOURT, an individual;
SHAWN MILLER, an individual; LOGAN
STELLMACHER, an individual;
EULENTIAS DUANE ALEXANDER, an
individual; STEPHEN LAKE, an individual,
ALLIED SPECTRUM, INC., a California
corporation, PRODIGIOUS COLLECTIVES,
LLC, a limited liability company, and DOES 1
through 50, inclusive,

Defendants.

Case No. **37-2021-0050889-CU-AT-CTL**

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFF'S MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

Hearing Date: July 18, 2023

Hearing Time: 9:00 a.m.

Case Filed: December 3, 2021

Department: C-73

Judge: Hon. James Mangione

Trial Date: N/A

1 Defendant STEPHEN LAKE (“Defendant” or “LAKE”) hereby opposes Plaintiff AMY
2 SHERLOCK’s, an individual and on behalf of her minor children T.S. and S.S. (“Plaintiff” or
3 “SHERLOCK”) Motion for Leave to File a Second Amended Complaint (“SAC”)(collectively
4 “Motion”).

5 MEMORANDUM OF POINTS AND AUTHORITIES

6 I. INTRODUCTION

7 Despite having reserved a hearing date for the Motion as far back as February 7, 2025, if not
8 sooner, Plaintiff waited until June 26 to file the Motion¹. As far back as February 7, 2025, Defendant
9 requested a copy of the proposed pleading for review in an effort to stave off any unnecessary
10 hearing. Plaintiff disregarded this request, instead opting to file the Motion. Plaintiff should not be
11 rewarded for this gamesmanship.

12 First and foremost, the Motion is untimely. While Plaintiff had *over four months* to file the
13 Motion without providing Defendant with a copy of the proposed leading as requested, she waited
14 until just 15 court days before the July 18 hearing date to file and serve in violation of *CCP* § 1005.
15 Under the circumstances, Plaintiff’s apparent intent to give Defendant as little time as possible (or,
16 in this case, less than that required by statute) should not be ignored and the Motion should be denied
17 as untimely. That notwithstanding, the Motion runs afoul of Cal. Rule of Court (“CRC”), Rule
18 3.1324 in that it fails to “state what allegations are proposed to be added to the previous pleading, if
19 any, and where, *by page, paragraph, and line number, the allegations are located.*” Additionally,
20 the Declaration of Andrew Flores submitted with the Motion does not specify the effect of the
21 amendment, why the amendment is necessary and proper, when the facts giving rise to the
22 allegations were discovered, and the reasons why the request was not made earlier.

23 Plaintiff’s unwillingness to cooperate in attempting to avoid the necessity of this motion over
24 the course of the prior four months coupled with these procedural defects constitute more than
25

26 ¹ As referenced in the Declaration of Andrew Hall accompanying this opposition, attorney Hall was traveling abroad
27 from June 26 through July 13 and, thus, did not have an opportunity to review and oppose the Motion before the
28 opposition deadline. Nevertheless, in light of the deficiencies with the Motion outlined in this Opposition, Defendant
requests that its late filed opposition be accepted by the Court or, alternatively, that Defendant be permitted to present
its argument orally at the July 18 hearing. *See Hall Dec* ¶ 6.

1 enough grounds to deny the Motion.

2 **II. SUMMARY OF FACTS**

3 On February 7, 2025, counsel for Defendant emailed counsel for Plaintiff, Andrew Flores,
4 Esq. (“FLORES”), to address two issues. First, FLORES has habitually failed to serve pleadings in
5 this case, which has resulted in Defendant failing to timely receive motions and pleadings. I requested
6 that FLORES include myself along with three others at my firm on service attempts to ensure proper
7 service. Second, *on February 7, 2025*, I noted to FLORES that a Motion for Leave to file an Amended
8 Complaint was on calendar for July and I requested the proposed amended pleadings for review to
9 evaluate the need of a hearing. *See Declaration of Andrew Hall (“Hall Dec”) ¶ 3*. Shortly after this
10 email, FLORES responded indicating that, in referring to the proposed amended pleading, “once I
11 have completed it, I will provide you a copy in advance of filing for your review.” *Hall Dec ¶ 4*. No
12 such copy of the proposed pleading was provided in advance of the filing of the Motion and, in fact,
13 was not provided until it was filed with the Motion. *Hall Dec ¶ 7*.

14 **III. LEGAL ARGUMENT**

15 *1. The Motion Is Untimely*

16 *CCP § 1005(b)* requires that “all moving and supporting papers shall be served and filed at
17 least 16 court days before the hearing.” There is no proof of service filed with the Motion so it is
18 difficult to say with certainty when the Motion was served; however, even if one takes the June 26,
19 2025 signature date, this would only be 15 court days before the July 18 hearing (22 calendar days
20 minus 7 non-court days: 3 Saturdays, 3 Sundays, and 1 holiday – Independence Day).

21 Plaintiff has had this hearing date for *at least* four months. Whether it be poor planning or
22 gamesmanship in waiting until the last minute, Plaintiff should not be provided any grace in its
23 submission of its late Motion.

24 *2. The Motion Fails To Comply With CRC, Rule 3.1324*

25 A motion to amend a pleading before trial *must* “state what allegations are proposed to be
26 added to the previous pleading, if any, and where, by *page, paragraph, and line number*, the
27 additional allegations are located.” *CRC, Rule 3.1324(a)(3)(emphasis added)*. Nowhere does the
28 Motion identify any specific allegations that were added (or for that matter subtracted) much less

1 identify those allegations by page, paragraph, and line number.

2 In addition, a separate declaration must accompany the motion and **must specific** (1) the effect
3 of the amendment; (2) why the amendment is necessary and proper; (3) when the facts giving rise to
4 the amended allegations were discovered; and (4) the reasons why the request for amendment was
5 not made earlier. *CRC, Rule 3.1324(b)(1)-(4)(emphasis added)*. Without delving into the substance
6 of the claims, which Defendant vehemently denies, specificity is not only mandated by the CRC but
7 necessary here given that the gist of the proposed “amendments” seem to be more evidentiary support
8 than necessary allegations.

9 The failure to comply with this rule can make it “almost impossible to show an abuse of
10 discretion in denying the motion.” *Foundation for Taxpayer & Consumer Rights v. Nextel*
11 *Communications, Inc.* (2006) 143 Cal.App.4th 131. Unexplained delays in presenting amendments or
12 failure to provide required documentation can justify denial of a motion for leave to amend.
13 *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218. The policy of liberality in
14 allowing leave to amend does not override procedural requirements. *Mac v. Minassian* (2022) 76
15 Cal.App.5th 510; *Foundation for Taxpayer & Consumer Rights, supra*; *McMillin v. Eare* (2021) 70
16 Cal.App.5th 893, 2021.


17 Again, CRC **mandates** that this information be included. Plaintiff’s failure to do so warrants
18 denial of the Motion.

19 **IV. CONCLUSION**

20 Given the foregoing, LAKE requests that the Motion be denied.

21
22 Dated: July 16, 2025

BLAKE LAW FIRM

23
24 By:  _____
25 STEVEN W. BLAKE, ESQ.
26 ANDREW E. HALL, ESQ.
27 Attorneys for Defendant
28 STEPHEN LAKE