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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MASTEC NORTH AMERICA, INC.,

No. C 08-3759 SI

Plaintiff,

**ORDER GRANTING DEFENDANT'S  
MOTION TO STRIKE JURY DEMAND**

v.

COMCAST CABLE COMMUNICATIONS  
MANAGEMENT, LLC,

Defendant.

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Defendant Comcast Cable Communications Management, LLC has moved to strike plaintiff Mastec North America, Inc.'s demand for jury trial. The motion is currently scheduled for a hearing on June 19, 2009. Pursuant to Civil Local Rule 7-1(b), the Court determines that the motion is appropriate for resolution without oral argument, and VACATES the hearing. As set forth below, the Court GRANTS defendant's motion.

**BACKGROUND**

This case was filed in the California Superior Court for the County of Alameda on July 3, 2008. The complaint did not include a jury demand. *See* Ntc. of Removal, Ex. A, Dkt. No. 1. Defendant filed its answer on August 5, 2008, and removed the action to federal court on August 6, 2008. *Id.* Ex. B. On November 7, 2008, plaintiff filed a demand for a jury trial. Defendant moves to strike plaintiff's jury demand as untimely.



1 recognized that under California law a litigant did not waive his right to a jury trial until trial was set.  
2 *Lewis*, 710 F.2d at 556. To determine whether the Rule 81(c)(3)(A) exception applies, the key inquiry  
3 is whether the state from which the case was removed requires an express demand at any time. *Id.*; *see*  
4 *also Ward v. Sunrise Assisted Living Invs. Inc.*, No. 05-3165, 2006 WL 37030, at \*1 (N.D. Cal. Jan. 5,  
5 2006) (citing *Lewis*, 710 F.2d at 556).

6 Plaintiff also argues that *Lewis* might have been decided differently in light of a 2002  
7 amendment to the California Code of Civil Procedure.<sup>1</sup> Again, plaintiff cites no authority in support of  
8 this assertion, and no court has acknowledged any effect of the 2002 amendment on the application of  
9 *Lewis* and the ten-day deadline. *See Wave House Belmont Park, LLC v. Travelers Prop. Cas. Co. of*  
10 *America*, 244 F.R.D. 608, 610 (S.D. Cal. 2007); *Jimena v. UBS AG Bank, Inc.*, No. 07-367, 2008 WL  
11 2951213, at \*2 (E.D. Cal. July 28, 2008); *Marcotte v. Allstate Idem. Co.*, No. 05-5160, 2006 WL  
12 870692, at \*2 (N.D. Cal Apr. 3, 2006); *Ward*, 2006 WL 37030, at \*1. In sum, because there is still no  
13 dispute that California is a state where an express jury demand is required, *Lewis* is still the controlling  
14 law on this issue and plaintiff's jury demand is untimely.<sup>2</sup>

15  
16 **CONCLUSION**

17 For the foregoing reasons and for good cause shown, the Court hereby GRANTS defendant's  
18 motion to strike plaintiff's demand for a jury trial. Dkt. No. 26.

19 **IT IS SO ORDERED.**

20  
21 Dated: June 16, 2009

  
\_\_\_\_\_  
SUSAN ILLSTON  
United States District Judge

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24 \_\_\_\_\_  
25 <sup>1</sup> In 2002, California added the following subsection to its jury trial demand statute: "The right  
26 to a trial by jury as declared by Section 16 of Article 1 of the California Constitution shall be preserved  
to the parties inviolate. In civil cases, a jury may only be waived pursuant to subdivision (d)." Cal. Civ.  
Proc. Code § 631(a) (West 2009).

27 <sup>2</sup> Had plaintiff moved for relief under Rule 39(b) on this particular issue, the Court would note  
28 that the Ninth Circuit has held that "an untimely jury demand due to legal mistake does not broaden the  
district court's narrow discretion to grant the demand" under Rule 39(b). *See Pacific Fisheries Corp.*  
*v. HIH Cas. & Gen. Ins. Ltd.*, 239 F.3d 1000, 1003 (9th Cir. 2001).