

1. DeLOIA, ET AL. v. CEFALU, ET AL., 23CV2066

Motion for Protective Order

TENTATIVE RULING # 1: DUE TO THE UNAVAILABILITY OF THE JUDICIAL OFFICER ASSIGNED FOR ALL PURPOSES, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, AUGUST 23, 2024, IN DEPARTMENT FOUR. THE COURT APOLOGIZES FOR ANY INCONVENIENCE TO THE PARTIES.

**2. ADVANCE CONSTRUCTION TECHNOLOGY, INC. v. CA HOCKEY, LLC, 23CV2241****Motion to Set Aside Default**

Default was entered on March 12, 2024, and default judgment was entered on April 15, 2024. Before the court is defendant CA Hockey, LLC's ("defendant") motion to set aside default and default judgment pursuant to Code of Civil Procedure section 473, subdivision (b),<sup>1</sup> on the ground of excusable neglect.

**1. Request for Judicial Notice**

Pursuant to Evidence Code section 452, subdivision (d), the court grants plaintiff's unopposed request for judicial notice of Exhibit A (plaintiff's Complaint), Exhibit B (proof of service for plaintiff's Complaint), Exhibit C (plaintiff's Notice of Entry of Default), and Exhibit D (plaintiff's Notice of Entry of Default Judgment).

**2. Discussion**

Section 473, subdivision (b) permits a court to "relieve a party ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. (§ 473, subd. (b).) Because the law favors disposing of cases on their merits, the provisions of section 473 are liberally construed. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372.)

Here, defendant submitted a declaration stating that, upon receipt of the summons and complaint, defendant reached out to its attorney who had previously represented defendant. However, the attorney failed to promptly respond to defendant. By the time defendant was finally able to communicate with the attorney, the default and default judgment had already been entered. The attorney then informed defendant that he could not assist with the defense of this suit due to a conflict stemming from his prior representation of plaintiff.

The motion to set aside default and default judgment is granted.

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<sup>1</sup> Undesignated statutory references are to the Code of Civil Procedure.

TENTATIVE RULING # 2: THE MOTION IS GRANTED. 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.

**3. ROGERS, ET AL. v. OSKOUY, 23CV0158****Motion to Compel**

Before the court is defendant Afsaneh Oskouy's ("defendant") motion to compel plaintiff Sean Roger's ("plaintiff") response to defendant's supplemental interrogatories and supplemental request for production propounded upon plaintiff.<sup>2</sup> Defendant also seeks monetary sanctions in the amount of \$899.57. Plaintiff did not file an opposition.

**1. Background**

This is a personal injury action arising from an automobile accident. On April 9, 2024, defendant propounded supplemental interrogatories and a supplemental request for production of documents upon each plaintiff via email. Pursuant to Code of Civil Procedure sections 1013, subdivision (e), 2030.260, and 2031.260, the deadline for plaintiff to serve a response to the discovery requests was May 13, 2024. Defendant attempted to meet and confer. However, to date, plaintiff has not served any response to the discovery requests.

**2. Discussion**

If a party to whom interrogatories or request for production were directed fails to serve a timely response, the propounding party may move for an order compelling responses and for a monetary sanction. (Code Civ. Proc., §§ 2030.290, subd. (b) [interrogatories], 2031.300 [request for production]; see *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) All that need be shown in the moving papers is that a set of interrogatories or request for production were properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (See *Leach v. Superior Court* (1980) 111 Cal.App.3d

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<sup>2</sup> In his moving papers, defendant states that he propounded discovery requests upon both plaintiffs, Sean Rogers and Jennifer Rogers, and that both plaintiffs failed to serve any response. However, the notice of motion is directed to plaintiff Sean Rogers only. Additionally, defendant seeks monetary sanctions against plaintiff Sean Rogers only.

902, 905–906.) The court finds that defendant has established this burden. Therefore, the motion to compel is granted.

Further, the court finds that \$899.57 is a reasonable monetary sanction. Defense counsel submitted a declaration stating that his current hourly rate is \$186.57, that he put a total of 4.5 hours of work into this motion, and that defendant incurred a filing fee of \$60 to file this motion to compel.

**TENTATIVE RULING # 3: THE MOTION TO COMPEL IS GRANTED. PLAINTIFF IS ORDERED TO PAY DEFENDANT \$899.57 IN MONETARY SANCTIONS WITHIN 30 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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.**

**4. HINES, AS TRUSTEE OF THE SEP HINES REVOCABLE LIVING TRUST v. JIANG, 23CV1101**  
**Motion to Be Relieved as Counsel**

**TENTATIVE RULING # 4: THE MOTION IS GRANTED. 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.**

**5. CALLAHAN v. POTTS, ET AL., 23CV0236****Plaintiff's Motion for Reconsideration**

On June 4, 2024, the court granted defendants' motion to vacate default and default judgment pursuant to Code of Civil Procedure section 473, subdivision (b).<sup>3</sup> On June 21, 2024, plaintiff filed the instant motion for reconsideration of that order pursuant to section 1008, subdivision (a).

**1. Background**

This is a breach of contract action arising from a failed attempt to open a cannabis dispensary in South Lake Tahoe, California. Default was entered on December 14, 2023, and default judgment was entered on December 18, 2023.

On January 16, 2024, defendants moved to set aside default and default judgment pursuant to section 473.5 on the ground that plaintiff failed to properly serve defendants with the summons and complaint. On February 23, 2024, the court denied defendants' motion.

On March 14, 2024, defendants filed a motion to vacate default and default judgment pursuant to section 473, subdivision (b). In support of the section 473, subdivision (b) motion, defendants' attorney Lawrence LaPorte submitted a declaration explaining that when he filed the section 473.5 motion on January 16, 2024, based on his review of the court's case file, he believed plaintiff had not submitted proof of service for the summons and complaint. Only later, on January 18, 2024, did defense counsel gain access to the full pleadings in this case through a unique "token" that the court allegedly provided to him. At that point, defense counsel realized his mistake in that plaintiff had, in fact, filed a proof of service that showed proper substitute service.

After receiving oral argument and allowing the parties to submit supplemental briefing, the court issued its ruling on June 4, 2024, granting defendants' section 473,

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<sup>3</sup> Undesignated statutory references are to the Code of Civil Procedure.

subdivision (b) motion. The court found that, assuming defendants' section 473, subdivision (b) motion was a renewal of defendants' section 473.5 motion, defendants satisfied section 1008, which generally requires that any renewal motion (or motion for reconsideration) be based upon new or different facts, circumstances, or law.

On June 6, 2024, plaintiff's counsel began investigating the truthfulness of Mr. LaPorte's representation that he accessed the pleadings in this case through a unique token the court provided him. (Callahan Decl., filed June 21, 2024, ¶ 9.) In support of the instant motion, plaintiff submitted a copy of email correspondence from the court stating, "[c]ase documents are not currently available on the Court's web portal" and "[w]e still don't have public access to the files on the website." (Callahan Decl., filed June 21, 2024, Exs. A & B.)

## **2. Discussion**

Section 1008, subdivision (a) provides that a party may make a motion to reconsider a prior order "based upon new or different facts, circumstances, or law." Plaintiff's motion is based on the new fact that court staff allegedly told plaintiff's counsel there is no public online access to view court filings (contrary to what defendants alleged in their section 473, subdivision (b) motion). The court finds that plaintiff has presented a new fact and thus, the court has jurisdiction to entertain reconsideration of its June 4, 2024, order. (§ 1008, subd. (a).) For the reasons discussed below, the court affirms its previous ruling.

The court finds that defendants' section 473, subdivision (b) motion was not a renewal motion under section 1008. Therefore, defendants were not required to show new or different facts, circumstances, or law. Even if defendants' section 473, subdivision (b) motion was a renewal of defendants' 473.5 motion, the court finds that defendants showed a new fact that would satisfy section 1008. Mr. LaPorte's declaration filed March 14, 2024, explains that only after filing the section 473.5 motion did he learn a proof of service had been filed, dispelling his belief that service was not properly effected. Despite the alleged statements made by the court to plaintiff's counsel (i.e., "[c]ase



documents are not currently available on the Court’s web portal” and “[w]e still don’t have public access to the files on the website”), the court finds Mr. LaPorte’s declaration credible. Attached to Mr. LaPorte’s declaration is a copy of email correspondence from the court dated January 18, 2024, providing Mr. LaPorte an “access Token” to “get case access.”

Further, the court finds that defendants demonstrated mistake, inadvertence, surprise, or excusable neglect under section 473, subdivision (b). “ [T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.’ [Citation.]” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 256.) “[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.” (*Elston v. City of Trulock* (1985) 38 Cal.3d 227, 233.)

In sum, the court grants the motion for reconsideration and affirms its June 4, 2024, ruling.

**TENTATIVE RULING # 5: THE MOTION FOR RECONSIDERATION IS GRANTED. THE COURT’S JUNE 4, 2024, RULING IS AFFIRMED. 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.**