1. FEDOR v. THE GRAND WALL, INC., SC20180239

Motion Contesting Good Faith Settlement

On April 29, 2024, defendant Valley Maintenance, LLC ("Valley Maintenance") gave notice that it reached a settlement with plaintiff and filed an application for a determination of the good faith of the settlement pursuant to Code of Civil Procedure section 877.6, subdivision (a)(2).[1] On May 23, 2024, the following defendants filed a motion contesting the good faith of the settlement: (1) Melvin Laub; (2) Edward Baker; (3) Adeline Baker Co. Trustees of the Baker Family Trust Dated June 9, 1977; and (4) Coldwell Banker, McKinney & Associates, Inc.

1. Background

This is a personal injury action arising from a slip and fall incident that occurred on January 6, 2017, on an outside stairway.

Valley Maintenance has agreed to pay plaintiff $100,000 in exchange for a dismissal.

2. Preliminary Matter

Moving defendants claim that Valley Maintenance's application for good faith settlement is defective because it was served electronically whereas the statute requires either personal service or service by certified mail. (See § 877.6, subd. (a)(2) ["[t]he notice, application, and proposed order shall be given by certified mail, return receipt requested, or by personal service"].) The objection is overruled. Moving defendants filed the instant motion and did not request any continuance based on the service issue.

3. Legal Principles

The procedure for a good faith settlement determination is set forth in section 877.6, subdivision (a)(2). In an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt, "a settling party may give notice of settlement to all parties and to the court, together with an application for determination

[1] Further undesignated statutory references are to the Code of Civil Procedure.

of good faith settlement and a proposed order." (§ 877.6, subd. (a)(2).) After such an application is made, "a nonsettling party may file a notice of motion to contest the good faith of the settlement." (*Ibid.*)

"The party asserting the lack of good faith shall have the burden of proof on that issue." (§ 877.6, subd. (d).) Specifically, "[o]nce there is a showing made by the settlor of the settlement, the burden of proof on the issue of good faith shifts to the non-settlor who asserts that the settlement was not made in good faith. [Citation.] If contested, declarations by the non-settlor should be filed which in many cases could require the moving party to file responsive counterdeclarations to negate the lack of good faith asserted by the non-settling contesting party." (*City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1261–1262.) "[T]he trial court's consideration of the settlement agreement and its relationship to the entire litigation in a contested setting must proceed upon a sufficient evidentiary basis to enable the court to consider and evaluate the various aspects of the settlement." (*Id.* at p. 1263.)

A good faith determination bars "any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." (§ 877.6, subd. (c).) "A good faith settlement determination also reduces the claims against the nonsettling defendants in the amount stipulated by the settlement. (§ 877, subd. (a).)" (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 959.)

In *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488 (*Tech-Bilt*), the California Supreme Court explained that in making a good faith settlement determination, a trial court should "inquire, among other things, whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries." (*Id.* at p. 499.) *Tech-Bilt* explained, "the intent and policies underlying section 877.6 require that a number of factors be taken

into account" in making this inquiry, "including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants. [Citation.] Finally, practical considerations obviously require that the evaluation be made on the basis of information available at the time of settlement. '[A] defendant's settlement figure must not be grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the settling defendant's liability to be.' " (*Tech-Bilt*, at p. 499.) "When evaluating whether the parties reached a settlement in good faith, a trial court must examine not only the settling tortfeasor's potential liability to the plaintiff, but also the settling tortfeasor's potential liability to all nonsettling tortfeasors." (*PacifiCare of California v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1465 (*PacifiCare*).) "[A] court not only looks at the alleged tortfeasor's potential liability to the plaintiff, but it must also consider the culpability of the tortfeasor vis-à-vis other parties alleged to be responsible for the same injury." (*TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.)

A party contesting the good faith of a settlement must "demonstrate … that the settlement is so far 'out of the ballpark' in relation to" the factors identified by our Supreme Court "as to be inconsistent with the equitable objectives of the statute." (*Tech-Bilt*, *supra*, 38 Cal.3d at pp. 499–500.) " '[A] "good faith" settlement does not call for perfect or even nearly perfect apportionment of liability. In order to encourage settlement, it is quite proper for a settling defendant to pay less than his proportionate share of the anticipated damages. What is required is simply that the settlement not be grossly disproportionate to the settlor's fair share.' " (*PacifiCare*, *supra*, 198 Cal.App.4th at p. 1465.) "[E]ach case must be decided based on its particular circumstances and the

trial court may consider its own judicial experience ….” (*Cahill*, *supra*, 194 Cal.App.4th at p. 968.)

“In the context of section 877.6, ‘[t]he trial court is given broad discretion in deciding whether a settlement is in “good faith” for purposes of section 877.6, and its decision may be reversed only upon a showing of abuse of discretion.’ ” (*Cahill*, *supra*, 194 Cal.App.4th at p. 957.) “[T]here is no abuse of discretion requiring reversal if there exists a reasonable or fairly debatable justification under the law for the trial court’s decision or, alternatively stated, if that decision falls within the permissible range of options set by the applicable legal criteria.” (*Ibid.*) “ ‘On appellate review, a trial court’s determination of good faith of a settlement involving the resolution of factual issues will be upheld if supported by substantial evidence.’ ” (*Dole Food Co., Inc. v. Superior Court* (2015) 242 Cal.App.4th 894, 909.) “If … there is no substantial evidence to support a critical assumption as to the nature and extent of a settling defendant’s liability, then a determination of good faith based upon such assumption is an abuse of discretion.” (*Toyota Motor Sales U.S.A., Inc. v. Superior Court* (1990) 220 Cal.App.3d 864, 871.)

4. Discussion

In support of their motion, moving defendants argue that Valley Maintenance “has not demonstrated that the settlement with the plaintiff is within the ballpark of what it should settle for. The Application does not state the financial condition and insurance policy limits of [Valley Maintenance] as required under *Tech-Bilt* factor five. Neither the Application nor the Declaration of Lori M. Cullman in support of the Application explains how the settlement meets the test of factor five.” (Mtn. at 4:12–16.)

However, it is the *moving defendants* who carry the burden of proving lack of good faith. In this case, moving defendants have not submitted any declaration or other evidence demonstrating that the settlement was not made in good faith. Therefore, the motion contesting the good faith settlement is denied, and Valley Maintenance’s application for good faith settlement is granted.

TENTATIVE RULING # 1: THE MOTION CONTESTING THE GOOD FAITH SETTLEMENT IS DENIED. DEFENDANT VALLEY MAINTENANCE LLC'S APPLICATION FOR GOOD FAITH SETTLEMENT 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.

2. VLAD v. LCP LAKE TAHOE EMP, LLC, 23CV2287

Oral Argument

TENTATIVE RULING # 2: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, JULY 12, 2024, IN DEPARTMENT FOUR.

3. FLANAGAN, ET AL. v. ROCCA, 23CV0768 (See Related Item No. 4)

(A) Motion for Attorney Fees

(B) Motion for Change of Venue

Plaintiffs' Motion for Attorney Fees

Plaintiffs move for sanctions against defendant in the amount of $3,330 pursuant to Code of Civil Procedure section 128.5, subdivision (a)[2] on the ground that defendant's Second Cause of Action in her Third Amended Cross-Complaint ("TACC") to foreclose on a mechanic's lien was frivolous where the mechanic's lien had expired prior to filing the foreclosure claim.

On June 26, 2024, defendant filed an opposition. On July 5, 2024, plaintiffs filed a reply.

1. Background

On May 11, 2023, defendant recorded a mechanic's lien against plaintiffs' property in the amount of $3,000 for "professional design, drafting [and] consulting services."

On May 18, 2023, plaintiffs filed the instant action for declaratory relief, a mandatory injunction, and a temporary restraining order.

On July 11, 2023, defendant filed a cross-complaint that asserted four causes of action against plaintiffs for breach of contract. The First Cause of Action in the original cross-complaint alleges that plaintiffs failed to pay defendant for certain invoices.

On January 29, 2024, defendant filed her TACC. The Second Cause of Action in the TACC was a claim to foreclose on defendant's mechanic's lien.

2. Preliminary Matter

The deadline for defendant's opposition brief was June 27, 2024. (See Code Civ. Proc., § 1005, subd. (b) ["[a]ll papers opposing a [noticed] motion… shall be filed with the court and a copy served on each party at least nine court days… before the hearing"].) Although

[2] Further undesignated statutory references are to the Code of Civil Procedure.

defendant filed her opposition brief on June 26, 2024, plaintiffs claim that defendant did not *serve* the opposition brief (electronically) until June 28, 2024. To date, there is no proof of service for defendant's opposition brief in the court's file. But, plaintiffs submitted a copy of defendant's June 28, 2024, email with the opposition brief allegedly attached thereto. (See Holmes Decl., Ex. A.)

The trial court has discretion to consider late documents where there is no prejudice to the opposing party. (*Hoover Community Hotel Development Corp. v. Thomson* (1985) 168 Cal.App.3d 485, 488 ["a trial court has broad discretion in allowing relief from a late filing where, as here, there is an absence of a showing of prejudice to the opposing party"], fn. omitted.) In fact, without evidence of such prejudice, it may be an abuse of discretion for the trial court to fail to consider the tardy document. (*Kapitanski v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, 32–33 [trial court abused its discretion in failing to read and consider late-filed declaration where defendant did not show that it would suffer prejudice or that injustice would result].)

In this case, plaintiffs have neither alleged nor shown any prejudice resulting from defendant's opposition that was served one day after the deadline. Therefore, the court exercises its discretion to consider the opposition brief.

3. Legal Principles

Section 128.5, subdivision (a) allows a trial court to order a party, the party's attorney, or both to pay the other party's reasonable expenses, including attorney fees, incurred as a result of "actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay." " 'Actions or tactics' " include making or opposing motions and filing pleadings. (§ 128.5, subd. (b)(1).) " 'Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (§ 128.5, subd. (b)(2).) Whether an action is frivolous is governed by an objective standard: any reasonable attorney would agree it is totally and completely without merit. (*Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 12.) There must also be a showing of an improper purpose, i.e.,

subjective bad faith on the part of the attorney or party to be sanctioned. (*Campbell v. Cal-Gard Surety Services, Inc.* (1998) 62 Cal.App.4th 563, 574.)

Appellate courts review section 128.5 sanctions orders for an abuse of discretion and review any findings of fact that formed the basis for the award of sanctions under a substantial evidence standard of review. (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1225–1226.)

4. Discussion

Pursuant to Civil Code section 8460, subdivision (a), "[t]he claimant shall commence an action to enforce a lien within 90 days after recordation of the claim of lien. If the claimant does not commence an action to enforce the lien within that time, the claim of lien expires and is unenforceable." Here, defendant recorded the mechanic's lien on May 11, 2023. Accordingly, the 90-day deadline to commence an action to foreclose on the mechanic's lien expired on August 9, 2023. Defendant did not assert a claim to foreclose on the mechanic's lien until her TACC, which was filed on January 29, 2024.

Having determined that defendant's claim to foreclose on the mechanic's lien was untimely, the court must now decide whether the filing of said claim warrants imposition of sanctions on defendant. The court concludes that sanctions are not warranted in this case, as there is no evidence of an improper purpose on defendant's part. Accordingly, the motion for sanctions is denied.

Defendant's Motion for Change of Venue

Before the court is defendant's motion to reclassify jurisdiction from limited civil to small claims. Plaintiffs challenge the motion on the following procedural grounds: (1) defendant failed to serve timely notice of the hearing; (2) defendant's attempted service by mail is invalid given the undated proof of service; and (3) defendant failed to give notice of the tentative ruling system as required by Local Rules of the El Dorado County Superior Court, rule 7.10.05, subdivision (C)(2).

Based on the hearing date of July 12, 2024, defendant's deadline to serve notice of the hearing (by mail) was June 13, 2024.[3] (See Code Civ. Proc., §§ 1005, subd. (b) & 1013, subd. (a).) However, defendant's proof of service indicates that the notice of motion and motion were not served until June 20, 2024.

The court agrees that defendant failed to serve timely notice of the hearing. Accordingly, the court continues the matter to August 23, 2024, to allow defendant time to properly re-serve notice of the hearing that also includes the following language: "Pursuant to Local Rule 7.10.05(A), the court will issue a tentative ruling for this matter on the court day before the hearing. The complete text of the tentative ruling will be available beginning at 2:00 p.m. at the court's web site, www.eldoorado.court.ca.gov. The tentative ruling providing the disposition of the matter only, without the rationale, can be obtained by calling (530) 573-3042 (South Lake Tahoe Branch) beginning at 2:00 p.m. on the court day before the hearing. The tentative ruling shall become the final ruling on the matter and no hearing will be held unless oral argument is timely requested or the tentative ruling indicates otherwise. Requests for oral argument must be made either through the court's web site or by calling (530) 573-3042 no later than 4:00 p.m. on the court day before the hearing."

TENTATIVE RULING # 3: PLAINTIFFS' MOTION FOR SANCTIONS IS DENIED. DEFENDANT'S MOTION FOR CHANGE OF VENUE (RECLASSIFICATION) IS CONTINUED TO 1:30 P.M., FRIDAY, AUGUST 23, 2024, TO ALLOW DEFENDANT TIME TO PROPERLY RE-SERVE NOTICE OF THE HEARING. 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

[3] 16 court days before July 12, 2024, is June 18, 2024. An additional five days for mail service results in a deadline of June 13, 2024.

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. FLANAGAN, ET AL. v. ROCCA, 24CV0490 (See Related Item No. 3)

(A) Petitioners' Motion for Attorney Fees

(B) Respondent's Motion for Change of Venue

Petitioners filed this action to release property from the claim of respondent's mechanic's lien. On May 31, 2024, the court granted the petition to release the property. Now pending before the court are: (1) petitioners' motion for attorney fees pursuant to Civil Code section 8488, subdivision (c); and (2) respondent's motion to reclassify the action from unlimited civil to small claims.

Petitioners' Motion for Attorney Fees

Pursuant to Civil Code section 8488, subdivision (c), petitioners claim they are entitled to $3,467.50 in attorney fees where the court granted the petition to release their property from respondent's mechanic's lien.

The prevailing party on a petition to release property from lien under Civil Code section 8480, et seq. is entitled to reasonable attorney fees. (Civ. Code, § 8488, subd. (c).)

Defendant's opposition largely consists of legal gibberish concerning the availability of monetary damages in breach of contract cases. But, the instant motion does not seek attorney fees based on an alleged breach of contract. Rather, petitioners seek to recover reasonable attorney fees as the prevailing party on their petition to release property from the claim of a mechanic's lien, as authorized under Civil Code section 8488, subdivision (c).

Petitioners allege their instant request includes fees for: (1) drafting a demand letter to release the lien; (2) conducting legal research regarding the procedure for the petition to release the mechanic's lien; (3) drafting the petition to release the mechanic's lien; (4) paying filing fees and process server costs associated with the petition; (5) analyzing respondent's answer to the petition; (6) addressing the tentative ruling associated with the petition as well as preparing for oral argument in response to respondent's request;

(7) appearing at the hearing; (8) drafting the orders confirming the release of the mechanic's lien; and (9) drafting and filing the instant motion for fees and costs.

In support of their request, petitioners submitted a declaration from their attorney, Alexis Holmes, which includes her firm's billing entries for this matter. (See Holmes Decl., ¶ 9.) Ms. Holmes's current hourly rate is $300.00. All entries were billed at a minimum increment of 0.1 hour. According to the billing entries, Ms. Holmes put a total of 9.6 hours[4] of work into this case. Petitioners request an additional $593.00 in costs (i.e., filing fee and process server fee).

Having reviewed counsel's declaration, the court awards petitioners $3,467.50 in attorney fees and costs.

Respondent's Motion for Change of Venue

Respondent filed the same motion for change of venue in this case as in Case Number 23CV0768. Petitioners challenge the motion on the following procedural grounds: (1) respondent failed to serve timely notice of the hearing; (2) respondent's attempted service by mail is invalid given the undated proof of service; and (3) respondent failed to give notice of the tentative ruling system as required by Local Rules of the El Dorado County Superior Court, rule 7.10.05, subdivision (C)(2).

Based on the hearing date of July 12, 2024, respondent's deadline to serve notice of the hearing (by mail) was June 13, 2024.[5] (See Code Civ. Proc., §§ 1005, subd. (b) & 1013, subd. (a).) However, respondent's proof of service indicates that the notice of motion and motion were not served until June 20, 2024.

The court agrees that respondent failed to serve timely notice of the hearing. Accordingly, the court continues the matter to August 23, 2024, to allow respondent time

[4] There is a slight discrepancy concerning the total number of attorney hours billed. The declaration indicates a total of 8.8 hours; however, the sum of the individual billing entries amounts to 9.6 hours.

[5] 16 court days before July 12, 2024, is June 18, 2024. An additional five days for mail service results in a deadline of June 13, 2024.

to properly re-serve notice of the hearing that also includes the following language: "Pursuant to Local Rule 7.10.05(A), the court will issue a tentative ruling for this matter on the court day before the hearing. The complete text of the tentative ruling will be available beginning at 2:00 p.m. at the court's web site, www.eldoorado.court.ca.gov. The tentative ruling providing the disposition of the matter only, without the rationale, can be obtained by calling (530) 573-3042 (South Lake Tahoe Branch) beginning at 2:00 p.m. on the court day before the hearing. The tentative ruling shall become the final ruling on the matter and no hearing will be held unless oral argument is timely requested or the tentative ruling indicates otherwise. Requests for oral argument must be made either through the court's web site or by calling (530) 573-3042 no later than 4:00 p.m. on the court day before the hearing."

TENTATIVE RULING # 4: PETITIONERS' MOTION FOR ATTORNEY FEES AND COSTS IS GRANTED. THE COURT ORDERS RESPONDENT TO PAY PETITIONERS $3,467.50 IN ATTORNEY FEES AND COSTS 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.

RESPONDENT'S MOTION FOR CHANGE OF VENUE (RECLASSIFICATION) IS CONTINUED TO 1:30 P.M., FRIDAY, AUGUST 23, 2024, TO ALLOW RESPONDENT TIME TO PROPERLY RE-SERVE NOTICE OF THE HEARING.

5. BRITT v. LAYMANCE, SC20210093

Motion to Set Aside Default and Default Judgment

Default was entered against defendants Terry Laymance, All About Rentals, and All About Tahoe on October 18, 2023, and default judgment was entered against the same defendants on October 19, 2023. Pending is defendant Terry Laymance's ("defendant") motion to set aside default and default judgment pursuant to Code of Civil Procedure sections 473, subdivision (d), and 473.5, subdivision (a). Plaintiff opposes the motion. Defendant did not file a reply.

1. Background

On May 21, 2021, plaintiff filed her complaint, asserting one cause of action for breach of a residential lease contract against defendant only. On August 16, 2022, plaintiff filed a Doe Amendment, replacing the true name of Doe 1 as All About Tahoe; Doe 2 as Hillary Wall Gans; and Doe 3 as Plumas Tahoe Paradise, LLC.

On May 9, 2023, plaintiff filed proof of substitute service as to defendant for the Summons and Complaint, as well as the Doe Amendment. Plaintiff also filed a declaration indicating that her (unregistered) process server attempted to personally serve defendant at 212 Elks Point Road No. 446 in Zephyr Cove, Nevada, on February 10, 13, and 24, 2023.

Defendant claims she was not properly served. In support of the instant motion, defendant submitted a declaration stating that: (1) in 2020 and 2021, she maintained an office for the businesses known as "All About Tahoe Realty" and "All About Rentals" at 212 Elks Point Road No. 446 in Zephyr Cove, Nevada (Laymance Decl., ¶ 3); (2) the Zephyr Cove office does not receive mail at that location (Laymance Decl., ¶ 3); (3) on June 1, 2022, defendant closed her Zephyr Cove office and began working exclusively out of her home located at 566 Anita Drive in South Lake Tahoe, California (Laymance Decl., ¶ 4); (4) on July 15, 2022, defendant finalized the sale of her business to Chase International (Laymance Decl., ¶ 5); (5) on September 1, 2022, defendant officially retired from real estate (Laymance Decl., ¶ 5); (6) on July 10, 2023, defendant moved out of her

house at 566 Anita Drive and began living in an RV and traveling extensively (Laymance Decl., ¶ 6); and (7) defendant did not learn about this lawsuit until January 22, 2024 (Laymance Decl., ¶ 7).

2. Preliminary Matter

The hearing on this motion was originally set for June 21, 2024. Accordingly, the deadline for plaintiff's opposition brief was June 7, 2024. (See Code Civ. Proc., § 1005, subd. (b) ["[a]ll papers opposing a [noticed] motion… shall be filed with the court and a copy served on each party at least nine court days … before the hearing"].) However, plaintiff did not file her opposition brief until June 17, 2024. On June 21, 2024, on the court's own motion, the court continued the matter to July 12, 2024. Plaintiff requests that the court consider her untimely opposition brief.

The trial court has discretion to consider late documents where there is no prejudice to the opposing party. (*Hoover Community Hotel Development Corp. v. Thomson* (1985) 168 Cal.App.3d 485, 488 ["a trial court has broad discretion in allowing relief from a late filing where, as here, there is an absence of a showing of prejudice to the opposing party"], fn. omitted.) In fact, without evidence of such prejudice, it may be an abuse of discretion for the trial court to fail to consider the tardy document. (*Kapitasnki v. Von's Grocery Co.* (1983) 146 Cal.App.3d 29, 32–33 [trial court abused its discretion in failing to read and consider late-filed declaration where defendant did not show that it would suffer prejudice or that injustice would result].)

In this case, defendant has neither alleged nor shown any prejudice resulting from plaintiff's late opposition. Therefore, the court exercises its discretion to consider the opposition brief.

3. Discussion

Code of Civil Procedure section 473.5 sets out the circumstances when a party may move for relief from a default or default judgment and be allowed to defend the action. The statute expressly allows a party to "file a notice of motion to set aside [a] default or

default judgment" "[w]hen service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action." (Code Civ. Proc., § 473.5, subd. (a).) The motion must be accompanied by "an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion or other pleading proposed to be filed in the action." (*Id.*, subd. (b).)

The party challenging a default or default judgment must file the notice of motion and accompanying documents "within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered." (Code Civ. Proc., § 473.5, subd. (a).) If the trial court finds "the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect," the court "may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action." (*Id.*, subd. (c).)

"It is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. [Citation.] Therefore, when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default." (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) " ' "Even in a case where the showing … is not strong, or where there is any doubt as to setting aside of a default, such doubt should be resolved in favor of the application." ' " (*Rosenthal v. Garner* (1983) 142 Cal.App.3d 891, 898.)

The court finds that defendant's motion is timely. The motion was filed within two years after entry of default judgment against her; and there is no proof of service showing when written notice of the default or default judgment was served upon defendant.

The court further finds defendant has established that her lack of actual notice in time to defend the action was not caused by her avoidance of service or inexcusable neglect. Therefore, the motion to vacate default and default judgment is granted. Defendant shall file and serve her answer no later than August 9, 2024.

TENTATIVE RULING # 5: THE MOTION TO VACATE DEFAULT AND DEFAULT JUDGMENT AGAINST DEFENDANT TERRY LAYMANCE IS GRANTED. DEFENDANT LAYMANCE SHALL FILE AND SERVE HER ANSWER NO LATER THAN AUGUST 9, 2024. 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.