TENTATIVE RULINGS FOR January 6, 2025
Department S-36
BEFORE THE HONORABLE TONY RAPHAEL
(909) 708-8851

ATTENTION: Commencing December 10, 2022, the Court will no longer regularly provide an official Court Reporter to transcribe proceedings in this Department. Parties who wish to have an official record of the proceedings in addition to a minute order must retain a private Certified Shorthand Reporter for the hearing and must submit a "Stipulation and Order For Appointment of Official Reporter Pro Tempore" to the court in the form found on the Court's website. If counsel are appearing for the hearing remotely, the Stipulation can be emailed to the Judicial Assistant at kcollierkosmatka@sb-court.org. The Court may sign the Order appointing the Certified Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro Tempore are deemed to have waived an official Court Reporter for the proceeding.

PLEASE REFER TO THE GENERAL ORDERS AND FORMS POSTED ON THE COURT'S WEBSITE.

PLEASE NOTE: There may be multiple tentative rulings so view the entire document.

This Court follows California Rules of Court, rule 3.1308(b) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings are posted on the court's website after 3:00 p.m. the day before the hearing at https://www.sb-court.org/divisions/civil/civil-tentative-rulings.

You may appear in person or by remote appearance at the hearing. (See www.sb-court.org/general-information/remote-access) If you do not have Internet access you may obtain the tentative ruling by calling (909) 708-8853 or telephoning the department at 909-708-8851)] If you (or both parties) wish to submit on the Tentative, notify the other party and call the department by 4:00 p.m. the day before and your appearance may be excused unless the Court orders you to appear.

You must appear at the hearing if you are so directed by the court in the tentative ruling and be prepared to address those issues set forth by the court in its ruling.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF RULING

US BANK NATIONAL ASSOCIATION

v.

KARL AXEL YERGENSEN

CIVSB2300441

RELEVANT PROCEDURAL/FACTUAL BACKGROUND

Before the Court is a Motion to Set Aside Default Judgment brought by Defendant Karl Axel Yergensen (hereinafter, "Defendant"). On January 11, 2023, Plaintiff US Bank National Association ((hereinafter, "Plaintiff") filed a Judicial Council Form for Common Counts against Defendant, alleging he owes Plaintiff $5,131.90, related to a credit account. (Compl. at 4.)

On March 24, 2023, Plaintiff filed a Proof of Service of Summons reflecting service of the Summons and Complaint and supporting documents on Defendant by way of substituted service on February 17, 2023 at 5:09 p.m. at 5775 Riverside Drive, Apt. 84, Chino, CA 91710 by leaving the documents with "John Doe". Attached to the Proof of Service of Summons is a Declaration of Reasonable Diligence, which indicates only one prior attempt to serve Defendant at the same address. (Dil. Decl. at 1.)

The process server also attested to mailing a copy of the Summons and Complaint and supporting documents to Defendant at the address where he served John Doe, pursuant to Code of Civil Procedure section 415.20, subdivision (b).

On January 16, 2024, the Court held an order to show cause hearing, where both parties were present. The minute order reflects that "Counsel for Plaintiff indicates the parties have met and conferred regarding Defendant filing an answer or calling Counsel for Plaintiff to try and settle this case. Court inquires of Defendant to see if he understands what is going on and informs him

that his default has not yet been taken, so there is still time to file an answer if he wishes." (Jan. 16, 2024 Min. Order.)

On March 7, 2024, Plaintiff filed a request, and related paperwork, for default judgment. On June 27, the Court held another order to show cause hearing, where it indicated it had not processed the submitted default judgment paperwork. (Jun. 27, 2024 Min. Order.) The minute order reflects that "Defendant states they were never served and do not reside a[t] the address where the service was effected," and the Court referred Defendant to self-help desk. (*Ibid.*)

On July 1, 2024, this Court entered default judgment on behalf of Plaintiff, awarding $5,131.90 in damages and $308 in court costs. On September 30, Defendant, in pro per, filed the instant Motion to Set Aside Default and Default Judgment, along with supporting declaration. Defendant argues he was not properly served[1], was mistaken about his deadline to file an answer, and files the motion pursuant to Civil Code section 473, subdivision (b).

On December 23, Plaintiff filed its opposition, arguing that Plaintiff's motion is untimely and that he does not meet the requirements of Civil Code section 473, subdivision (b). No reply was filed.

DISCUSSION

I. Relevant Legal Standards.

a. Code of Civil Procedure Section 473, subdivision (b).

"The condition or situation which section 473 of the Code of Civil Procedure seeks to remedy is one in which a party to a cause is unexpectedly placed to his injury without any fault or

[1] Although Defendant has referenced in this pleading and before the Court at the prior hearings that he does not believe he was properly served because he does not reside at the address of service, "statutes governing substitute service shall be liberally construed to effectuate service and uphold jurisdiction," in instances where "actual notice has been received by the defendant." (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544.) Defendant received actual notice because he appeared at two prior hearings, so any argument related to ineffective service is defeated.

negligence of his own which ordinary prudence could not have guarded against." (*Hummel v. Hummel* (1958) 161 Cal.App.2d 272, 276.) Under the relevant, discretionary portion of Code of Civil Procedure section 473, subdivision (b)[2], a court:

> may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

(*Ibid*.)

"A mistake of fact is when a person understands the facts to be other than they are; a mistake of law is when a person knows the facts as they really are but has a mistaken belief as to the legal consequences of those facts." (*Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921.) "Inadvertence is defined as lack of heedfulness or attentiveness, inattention, fault from negligence." (*Ibid.*) "The 'surprise' referred to in section 473 is defined to be some 'condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.'" (*Ibid.,* citing to *Miller* v. *Lee*, 52 Cal.App.2d 10, 16.) "The 'excusable neglect' referred to in the section is that neglect which might have been the act of a reasonably prudent person under the same circumstances." (*Ibid.*) "A party will not be relieved from his default unless he shows he acted in good faith and that his mistake, inadvertence, surprise or excusable neglect was the actual cause of his failure to appear." (*Id.* at 921-922.)

[2] Code of Civil Procedure section 473, subdivision (b) contains provisions for both discretionary and mandatory relief, however, Defendant is neither seeking nor has complied with the prerequisites for the application of the mandatory relief, which involves submitting "an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect."

II. Analysis.

Plaintiff opposes this motion, arguing it is untimely, Defendant does not meet the requirements of Civil Code section 473, subdivision (b), and that Defendant's failure to attach a responsive pleading requires it to fail.

a. Whether Defendant's Motion is Untimely.

Plaintiff argues that Defendant's motion is untimely because it was not filed within six months of Plaintiff's request for default judgment, which was filed on March 7, 2024. Defendant's present motion was filed September 30, approximately six months and three weeks after Plaintiff's application for default, but within six months of the default judgment being entered. For its premise, Plaintiff relies on *Rutan v. Summit Sports*, in which the Court of Appeal, Third District propounded that "[t]he general rule is that the six-month period within which to bring a motion to vacate under section 473 runs from the date of the default and not from the judgment taken thereafter." (*Rutan v. Summit Sports* (1985) 173 Cal.App.3d 965, 970.)

Defendant only pursues relief under section 473, subdivision (b), which seeks discretionary relief. As explained by the Court of Appeal, Fifth District, "[t]he six-month time limit for granting statutory relief is jurisdictional and the court may not consider a motion for relief made after that period has elapsed." (*Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, 42.)

Although Plaintiff filed its request for entry of default on March 7, at the June 27 court hearing, this Court confirmed that the entry of default "received by the court [on] 3/7/24 ha[d] not been processed." (Jun. 27, 2024 Min. Order.)

The Court of Appeal, Fourth District, has stated, "there is an important distinction in the way that discretion is measured in section 473 cases. The law favors judgments based on the merits, not procedural missteps. Our Supreme Court has repeatedly reminded us that in this area doubts must be resolved *in favor of relief*, with an order denying relief scrutinized more carefully

than an order granting it." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 134 (emphasis in original).) As this Court did not process or recognize the default until June 2024, as recognized by the Court's June 27 minute order, and given that the California Supreme Court has stated that "general underlying purpose of section 473(b) is to promote the determination of actions on their merits," (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839), the Court finds the motion timely and considers it on its merits.

b. Defendant has Met the Substantive Requirements for Discretionary Relief Under Civil Code section 473, subdivision (b).

Defendant moves, pro per, for relief under section 473, subdivision (b) based on his own "mistake, inadvertence, surprise, or excusable neglect." (Mot. at 4.) Plaintiff argues that these elements are not present. (Opp. at 4-5.)

Setting aside an order under the discretionary section of Code of Civil Procedure section 473, subdivision (b) requires the mistake, inadvertence, or surprise to be reasonable. (*Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 315.) Specifically, "a reasonably prudent person under the same or similar circumstances might have made the same error." (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 26; *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1112.)

Ordinarily, a party seeking relief under section 473, subdivision (b) from a judgment, order, or other proceeding has the double burden of showing (1) diligence in making the motion after discovering his own mistake, and (2) a satisfactory excuse for the occurrence of that mistake. (*Kendall v. Barker* (1988) 197 Cal.App.3d 619, 625.) The court must generally consider the facts and circumstances of a case to determine whether the party was diligent in seeking relief (*Mercantile Collection Bureau v. Pinheiro* (1948) 84 Cal.App.2d 606, 609), and whether the reasons given for the party's mistake are satisfactory. For a mistake of fact to justify relief, one

must understand the facts to be other than they are. (*Gilio v. Campbell* (1953) 114 Cal. App. 2d Supp. 853, 857.) Similarly, "it is not every inadvertence or negligence that warrants relief. It is '…only such inadvertence or negligence as may reasonably be characterized as excusable.'" (*Hummel v. Hummel* (1958) 161 Cal.App.2d 272, 276, quoting *Hughes v. Wright* (1944) 64 Cal.App.2d 897, 901.) Excusable neglect simply requires the moving party to show a reasonable excuse for the default. (*Shapiro v. Clark* (2008) 164 Cal.App.4th 1128, 1141-42.) "When examining the mistake or neglect, the court inquires whether a reasonably prudent person might have made the same error under the same or similar circumstances." (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1782-1783.) Thus, the question before the Court is whether counsel's proffered excuses are "reasonable."

Determinative of whether default can be set aside under section 473, subdivision (b) in such circumstances is whether the moving party has shown a reasonable excuse for the default. (*Shapiro v. Clark* (2008) 164 CA4th 1128, 1141-1142.) "The acts which brought about the default must have been the acts of a reasonably prudent person under the same circumstances." (*Jackson v. Bank of America* (1983) 141 Cal. App. 3d 55, 58.) Where the opposing party has not shown relief from default will prejudice the opposing party, "the original negligence in allowing the default to be taken will be excused on a weak showing." (*Aldrich v. San Fernando Valley Lumber Co., Inc.* (1985) 170 Cal. App. 3d 725, 740.)

Defendant attests that he had the mistaken belief that he had until October l, 2024 to file an answer and that default judgment would not be entered because he had appeared at the scheduled court hearings. (Def.'s Decl. ¶¶2f-2i.) Defendant also attests that he "was actively seeking legal help, but due to" his remote residence in Crestline, and the fact that he has "no internet access, it was difficult to find legal assistance." (Def.'s Decl. ¶2h.) Defendant's

explanation for his failure to file an answer and delay in seeking redress from the default seem reasonable. Someone unfamiliar with the legal process could easily assume that default would not be entered given he was attending the proceedings. Defendant has also explained that he had not filed an answer because he mistakenly believed he had more time to do so. Further, Plaintiff does not argue in its opposition that relief from default will prejudice it. Thus, Defendant need only make a weak showing of excusable neglect to obtain relief.

Given this standard of only needing to make a weak showing, it is plausible a reasonably prudent person would make the same mistakes as Defendant, especially given his lack of internet access. Given that "'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.'" (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 371-372, quoting *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.) Applying this standard, the Court finds that Defendant has properly shown default was entered based on his own mistake, inadvertence, surprise, or excusable neglect, as is required by section 473, subdivision (b).

c. Defendant Did File and Serve His Proposed Answer on Plaintiff's Counsel

Plaintiff argues that relief pursuant to Code of Civil Procedure section 473, subdivision (b) should not be granted because Defendant did not attach his proposed answer. (Opp. at 5.) As a precondition for obtaining relief from default, a defendant's application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. § 473, subd. (b).

Here, Defendant did file and serve on Plaintiff's counsel a proposed Answer. The court's docket entry for September 30, 2024 reflects, "Proposed Order Received (Confidential) ** Proposed Answer." This entry is Defendant's proposed Answer with a proof of service attached.

CONCLUSION

Based upon the foregoing, the Court grants Defendant's Motion to Set Aside Default and Default Judgment. The default and default judgment are hereby ordered set aside.

Defendant's proposed Answer, lodged with the Court on September 30, 2024, is ordered filed.

The Court will inquire from the parties at the hearing on January 6, 2025 about setting a trial date.

COSCO SHIPPING LINES

v.

PUBLIC MUTUAL CORP.
CIVSB2203862

No tentative ruling.

The Court has questions.