SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 05/20/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34 (Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-

https://contracosta-courts-ca.zoomgov.com/j/1611085023?pwd=SUxPTEFLVzRFYXZycWdTWlJCdlhIdz09

Meeting ID: 161 108 5023
Passcode: 869677

Law & Motion

1. 9:00 AM CASE NUMBER: L23-05411
CASE NAME: SYNCHRONY BANK VS. JOHN MCQUEEN
HEARING IN RE: MOTION TO SET ASIDE DEFAULT & DEFAULT JUDGMENT
FILED BY:
TENTATIVE RULING:

John McQueen ("Defendant") filed a Motion to Set Aside Default and Default Judgment on

April 7, 2025 (the "Motion to Set Aside Default"). The Motion to Set Aside Default was set for hearing on May 20, 2025. No opposition has been filed to date by Plaintiff Synchrony Bank ("Plaintiff").

Background

Plaintiff filed a Complaint on October 9, 2023. An Answer was filed by Defendant on December 5, 2023.

On January 13, 2025, both parties were present in court for a previously scheduled court trial. The trial was continued to March 24, 2025. Both parties had notice of the continued trial date. See Minute Order dated January 13, 2025. Thereafter, the court gave notice to all parties that the trial date was rescheduled from March 24, 2025 to April 2, 2025 in Department 34 of the Court. Notice was given to Defendant at his address of record (4628 Golden Bear Dr, Antioch, CA 94531). See NOTICE OF CONTINUANCE AND CASE REASSIGNMENT dated January 23, 2025 ("Notice of Continuance").

On April 2, 2025, only Plaintiff appeared for trial. The trial proceeded with the trial court and rendered judgment for Plaintiff. See Minute Order dated April 2, 2025; see also Judgment entered April 17, 2025.

Analysis

Plaintiff's motion is based upon Code of Civil Procedure section 473(b).

Under Code of Civil Procedure section 473(b), the Court may, in its discretion, relieve a party from any "judgment, dismissal, order, or other proceeding taken against him or her" resulting from "his or her mistake, inadvertence, surprise, or excusable neglect." Code Civ. Proc., § 473(b); *Rivercourt Co. Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480 ("*Rivercourt*"). A motion seeking relief under section 473 is addressed to the sound discretion of the trial court. *Rivercourt*, *supra*, 41 Cal.App.4th at 1480. Neither mistake, inadvertence, nor neglect will warrant relief unless upon consideration of all of the evidence it is found to be excusable. *Conway v. Municipal Court* (1980) 107 Cal.App.3d 1009, 1017. The party seeking relief under section 473(b) bears the burden of establishing that the mistake, inadvertence, surprise or neglect was excusable. *Id*.

Some five days after the trial date, Defendant filed the Motion to Set Aside Default. Defendant explains that the notice received as to the April 2, 2025 trial indicated a trial

location at 725 Court Street in Martinez. See Declaration of Defendant as part of Motion to Set Aside Default ("McQueen Decl."), p. 3. He states that court staff advised him that the location had been changed to 100 – 37th Street in Richmond (the George D. Carroll Courthouse). *Id*. He states that he arrived at the courthouse in Richmond was told that a judgment had been made. *Id*. He asserts that he was never sent any documentation that the location had changed. *Id*.

The Court's Notice of Continuance which reset the trial to April 2, 2025, plainly identified the date, time and place of trial:

HEARING DATE:	HEARING TIME:	HEARING LOCATION:
04/02/2025	10:00 AM	DEPARTMENT 34, RICHMOND 100 37TH STREET ROOM 205 RICHMOND, CA 94806

See Notice of Continuance. This notice was duly served on Defendant on January 23, 2025.

However, Plaintiff served a separate notice of trial dated February 19, 2025. That notice, however, erroneously stated that the location of the trial set in Department 34 was "725 Court Street, Martinez, CA 94553." Importantly, that notice was served on February 19, 2025, *weeks after the Court's own notice*. See Proof of Service filed February 19, 2025.

Given Defendant's reliance on this later erroneous notice, the Court finds, in its discretion, that the Judgment resulted from Defendant's mistake, inadvertence, surprise, and/or excusable neglect. The Court further finds that it is just and equitable to relieve Defendant from the Judgment.

However, no proof of service of this Motion to Set Aside Default was filed by Defendant. Accordingly, the Court continues the matter for service.

Disposition

The Court finds and orders as follows:

1. The Court is inclined to grant the Motion to Set Aside Default for reasons set forth above.
2. However, because of the failure to file a Proof of Service reflecting service of the motion on Plaintiff, the Court hereby continues the matter to **June 24, 2025, 9:00**

a.m. in Department 34 of the Court. Defendant is ordered to serve the motion on Plaintiff no later than **May 28, 2025** and to file a proper Proof of Service at least ten (10) days before the continued hearing date. Any opposition shall be filed and served no later than **June 11, 2025**.

3. The parties are ordered to meet and confer regarding the relief sought by the pending motion. If the set aside of the Judgment is agreed upon, the parties may file an appropriate form of stipulation and vacate the hearing date.

2. 9:00 AM CASE NUMBER: L24-00920
CASE NAME: COACHELLA VALLEY COLLECTION SERVICE VS. EBRAHIM CHEHREHGOSHAY TEHRANI
***HEARING ON MOTION IN RE: ORDER THAT MATTERS IN REQ FOR ADMISSION BE DEEMED ADMITTED AND ORDER FOR MONETARY SANCTIONS**
FILED BY: COACHELLA VALLEY COLLECTION SERVICE
TENTATIVE RULING:

Plaintiff Coachella Valley Collection Service ("Plaintiff") filed a Motion for Order that Matters in Requests for Admission be Deemed Admitted on January 31, 2025 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 20, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Ebrahim Chehrehgoshay Tehrani ("Defendant") with a Requests for Admission (Set One). See Declaration of Stephen M. Miles filed January 31, 2025 as part of Motion to Deem Admissions ("Supporting Declaration"), p. 1 and **Exhibit A** thereto (the "RFAs"). The RFAs were served on July 3, 2024 by mail. *Id*.

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before August 7, 2024 (30 days from and after July 3, 2024 was August 2, 2024 and five calendar days thereafter fell on August 7, 2024). No responses were received by that deadline. See *id*. at p. 1. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in

evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*. There is no meet and confer requirement for a motion to deem matters admitted under Section 2033.280. See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

<u>Sanctions</u>

1. Defendant's failure to respond to the RFAs even after the deadline to do so had passed and demands for responses were made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).
2. Defendant's failure to respond to meet and confer efforts regarding the RFAs constitutes failing to confer with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, pursuant to Code of Civil Procedure section 2023.010(i).
3. The Court finds that the foregoing conduct by Defendant constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the RFAs, the Court finds that Defendant did not act with substantial justification.
4. Moreover, monetary sanctions are mandatory pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(c).

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 05/20/2025

Disposition

The Court further finds and orders as follows:

1. The Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 12 are DEEMED ADMITTED by Defendant.
3. Defendant shall pay monetary sanctions to Plaintiffs in the amount of $300.00 (the "Monetary Sanctions"). The Court finds that the Monetary Sanctions are reasonable expenses, including attorneys' fees, incurred by Plaintiffs as a result of the foregoing conduct by Defendant. In fixing said amount, the Court has considered all evidence in the record before the Court, including the Supporting Declaration. The Monetary Sanctions shall be paid within thirty (30) days from notice of entry of this order.
4. A proposed form of order was lodged with the Court which the Court shall execute and enter.

3. 9:00 AM CASE NUMBER: L24-04329
CASE NAME: JPMORGAN CHASE BANK N.A. VS. TERRI BESSETTE
***HEARING ON MOTION IN RE: TO BE RELIEVED AS COUNSEL**
FILED BY: BESSETTE, TERRI M
****TENTATIVE RULING:****

Raymond Lee of the Petoskey Law Firm, PLLC ("Counsel") filed a Motion to be Relieved as Counsel on February 19, 2025 (the "Motion to be Relieved as Counsel"). The matter was set for hearing on May 20, 2025.

Background

Counsel seeks to be relieved as attorneys for defendant Terri M. Bessette ("Defendant").

The supporting declaration filed by Counsel indicates that there has been a breakdown in the attorney-client relationship. See Declaration filed February 19, 2025, ¶2. Defendant has been given notice of the Motion to be Relieved as Counsel. *Id*. at ¶3.

Analysis

The Motion to be Relieved as Counsel is unopposed.

Disposition

The Court finds and rules as follows:

1. The Motion to be Relieved as Counsel is GRANTED.

2. Counsel to submit proposed a form of order using Judicial Council form MC-053 ("Order Granting Attorney's Motion to be Relieved as Counsel—Civil"). The previously lodged form of order is incomplete. Among other things, the lodged form of order omits any current or last known address at Paragraph 6.

4. 9:00 AM CASE NUMBER: L24-04329
CASE NAME: JPMORGAN CHASE BANK N.A. VS. TERRI BESSETTE
***HEARING ON MOTION FOR DISCOVERY**
FILED BY: JPMORGAN CHASE BANK N.A.
TENTATIVE RULING:

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on September 19, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on May 16, 2025. Amended moving papers were filed on November 1, 2024. Subsequently, the hearing date on the Motion to Deem Admissions was reset for May 20, 2025 in Department 34 of the Court. The parties were given notice of the new hearing date.

It should be noted that since such notice was given on or about February 13, 2025, counsel for defendant Terri M. Bessette ("Defendant") has filed a motion to withdraw as Motion to be Relieved as Counsel. That motion is set for hearing concurrently with this motion.

No opposition has been filed to date by Defendant to this Motion to Deem Admissions.

Background

Plaintiff served Defendant with a Requests for Admission (Set One). See Declaration of Ruonan Wang filed November 1, 2024 as part of the amended moving papers on the Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on July 2, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated July 2, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before August 6, 2024 (30 days from and after July 2, 2024 was August 1, 2024 and five calendar days thereafter fell on August 6, 2024). No responses were received by that deadline. See *id*. at ¶3. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶4 and **Exhibit 2** thereto.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad

discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*. There is no meet and confer requirement for a motion to deem matters admitted under Section 2033.280. See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. The Court is inclined to grant the Motion to Deem Admissions as set forth above.
2. However, in light of the granting of the accompanying Motion to be Relieved as Counsel and in the exercise of the Court's discretion, the Court hereby continues the matter to **June 10, 2025, 9:00 a.m. in Department 34** of the Court. Any opposition shall be filed and served no later than **June 3, 2025**. The clerk of the Court is directed to give notice to all parties. Notice to Defendant shall be given to any designated last known address set forth in the Order Granting Attorney's Motion to be Relieved as Counsel entered by the Court on the Motion to be Relieved as

Counsel.

5. 9:00 AM CASE NUMBER: L25-00003
CASE NAME: KIM CRAWFORD VS. MARGARET LYMAN
***HEARING ON MOTION IN RE: MOTION TO BE RELIEVED AS COUNSEL FILED BY PLN ON 1/24/25**
FILED BY: CRAWFORD, KIM HEFNER
TENTATIVE RULING:

Mark R. Mittelman ("Counsel") filed a Motion to be Relieved as Counsel on January 24, 2025 (the "Motion to be Relieved as Counsel"). As set forth in the Court's prior tentative ruling, it appears that the motion face page indicated a hearing date of June 20, 2025, notwithstanding the clerk of the Court having set the motion on the calendar for May 6, 2025. No notice to either party of the May 6, 2025 hearing date appeared of record on the Court's docket. Therefore, the Court reset the motion for May 20, 2025, 9:00 a.m. and directed the clerk of the Court to give notice to all parties. The Court's order continuing the matter was duly served, including directly on the individual plaintiff, Ms. Crawford. See Clerk's Certificate of Mailing dated April 30, 2025.

Background

Counsel seeks to be relieved as attorney for Ms. Crawford. The supporting declaration filed by Counsel indicates that there has been a breakdown in the attorney-client relationship, as Counsel has lost contact with Ms. Crawford who refuses to respond. See Declaration filed January 24, 2025, ¶2. Ms. Crawford has been given notice of the Motion to be Relieved as Counsel. *Id*. at ¶3. As set forth above, Ms. Crawford was given further notice of the hearing date.

Analysis

The Motion to be Relieved as Counsel is unopposed.

Disposition

The Court finds and rules as follows:

1. The Motion to be Relieved as Counsel is GRANTED.
2. Counsel has submitted a proposed a form of order [Judicial Council form MC-053 ("Order Granting Attorney's Motion to be Relieved as Counsel—Civil")]. The Court will execute and enter such order.

6. 9:00 AM CASE NUMBER: MSL20-04255

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 05/20/2025

CASE NAME: AMERICAN EXPRESS NATIONAL BANK VS. RODRIGO LEROUX
***HEARING ON MOTION IN RE: MOTION FOR ORDER AMENDING JUDGMENT NUNC PRO TUNC (AMENDED JUDGMENT) [CCP 473**
FILED BY: AMERICAN EXPRESS NATIONAL BANK
****TENTATIVE RULING:****

Plaintiff and judgment creditor American Express National Bank ("Plaintiff") filed a Motion for Order Amending Judgment Nunc Pro Tunc on February 6, 2025 (the "Motion to Amend Judgment"). The Motion to Amend Judgment was set for hearing on May 20, 2025.

Background

A default money Judgment was entered herein against defendant and judgment debtor Rodrigo Leroux ("Defendant") on January 29, 2024 (the "Judgment"). The principal damages awarded were $13,376.76. *Id*. at ¶6. The costs awarded were $435. *Id*. Those two sums total $13,811.76. However, on the face of the Judgment the total is stated to be $13,814.84, a 3.08 difference. *Id*. Plaintiff seeks to amend the Judgment to correct the amount of damages, which Plaintiff represents is actually $13,379.84.

Analysis

Plaintiff's motion relies upon Code of Civil Procedure section 473(d) in contending that the Court should amend the Judgment to correct the damages amount.

Under Section 473(d), "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed..." Code Civ. Proc. § 473(d); see *Machado v. Myers* (2019) 39 Cal.App.5th 779, 798.

It is evident that the form of Judgment was at variance with the actual request made, i.e. that judgment be rendered for the current principal balance of $2,073.39 in accord with the terms of the parties' stipulation. See Request for Entry of Default filed May 25, 2023. This was supported by the operative declaration submitted at the time. See Declaration in Support of Application for Entry of Default Judgment filed May 25, 2023, ¶8.c. ("...$2,073.39 remains due and owing as of May 1, 2023...").

"The term 'clerical error' covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. If an error, mistake, or omission is the result of inadvertence, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected." *Estate of Douglas* (2022) 83 Cal.App.5th 690, 695.

The complaint prayed for damages in the amount of $13,382.92. The request for entry of a default judgment erroneously referenced a principal demand of the complaint as $13,379.84. See Request for Entry of Default filed October 2, 2023. That was $3.08 less.

The $3.08 was the acknowledged credits against the principal. Accordingly, the correct calculation should have been $13,382.92 less $3.08 for an amount due and owing of $13,379.84. With $435 in costs, the total should have been $13,814.84, which would match the total on the face of the Judgment.

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion to Amend Judgment is GRANTED.
2. Proposed forms of order and amended judgment were lodged with the Court which the Court shall execute and enter.