

**Tentative Rulings for April 23, 2024**  
**Department 503**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

---

---

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

---

---

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

---

(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 503**

Begin at the next page







(36)

**Tentative Ruling**

Re: **Chhina v. Reschman**  
Superior Court Case No. 23CECG00682

Hearing Date: April 23, 2024 (Dept. 503)

Motion: by Defendant to Set Aside the Default

**Tentative Ruling:**

To continue the motion to Wednesday, May 29, 2024, at 3:30 p.m., in Department 503, to allow defendant an opportunity to file and serve the proposed responsive pleading. (Code Civ. Proc. §473, subd. (b).) Defendant must serve and submit the proposed responsive pleading no later than on Thursday, May 23, 2024.

**Explanation:**

Attorney Affidavit of Fault:

The court is empowered to relieve a party “upon any terms as may be just ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc. § 473, subd. (b).) “[W]henever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise or neglect, [the court shall] vacate any (1) resulting default entered by the clerk ... or (2) resulting default judgment or dismissal entered against his or her client.” (*Ibid.*) Where a motion seeking this relief is based on an “attorney affidavit of fault,” the relief is mandatory. Otherwise, relief is discretionary. The only limitation on the mandatory relief is that the court may deny relief if it finds the default “was *not* in fact caused by the attorney’s mistake, inadvertence, surprise or neglect” (e.g. where the attorney is attempting to “cover up” for the client). (*Id.*) A motion seeking mandatory relief must state clearly that this is the relief sought under Code of Civil Procedure Section 473. (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125.)

Here, the motion is timely and provides that defendant is seeking relief on the grounds of counsel’s mistake and an attorney affidavit of fault is filed in support of the motion. It is clear that defendant’s default was caused by defense counsel, Gregory Roberts’ mistake. According to Mr. Roberts, he was originally retained to handle the probate matter for the Estate of Mikiko Nakahira. After the complaint was filed, Mr. Roberts indicated that a litigator would be required to handle the civil matter, but he agreed to accept service of the summons and complaint. (Roberts Decl., ¶ 3.) Despite this fact, from April – May 2023, Mr. Roberts and plaintiff’s counsel were engaged in settlement discussions. Mr. Roberts indicates that during these discussions, plaintiff’s counsel agreed to extend the time to file an answer; however, an exact deadline was never agreed upon. (*Id.*, at ¶ 5.) In June 2023, Mr. Roberts became aware of a health



