Tentative Rulings for April 10, 2025
Department 501

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.***

23CECG03631 ***In re: Angelette Grady*** **(Dept. 501)**

23CECG03580 ***In re: Aamaiyah Wilbert*** **(Dept. 501)**

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 501

Begin at the next page

(03)

Tentative Ruling

Re: ***Prafford v. Trust-All Roofing, Inc.***
Case No. 24CECG01227

Hearing Date: April 10, 2025 (Dept. 501)

Motion: by Plaintiffs to Vacate Order Granting Defendant's Motion for Summary Judgment

Tentative Ruling:

To deny plaintiffs' motion to vacate the order granting defendant Trust-All Roofing, Inc.'s motion for summary judgment. To deny defendant's request for sanctions against plaintiffs and their attorney.

Explanation:

Plaintiffs move for relief from the order granting summary judgment in favor of defendant Trust-All Roofing, Inc., under Code of Civil Procedure section 473, subdivision (b), contending that the order was granted due to the excusable mistake or neglect of their attorney. Section 473(b) provides for discretionary relief from a default or default judgment that has been entered due to mistake, surprise, inadvertence or excusable neglect. (Code Civ. Proc. § 473, subd. (b).) "Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.) "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. A judgment will not ordinarily be vacated at the demand of a defendant who was either grossly negligent or changed his mind after the judgment." (*Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921, citations omitted.)

Section 473(b) also includes a mandatory relief provision where the moving attorney admits that his client's default, default judgment, or dismissal was entered due to the attorney's fault. "In the 'mandatory provisions,' section 473 further provides that 'Notwithstanding any other requirements of this section, the court shall, whenever 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, vacate any (1) resulting default entered by clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.'" (*Avila v. Chua* (1997) 57 Cal.App.4th 860, 865–866.)

Here, plaintiffs appear to be relying on both the discretionary and mandatory portions of section 473(b) to support their motion for relief from the summary judgment order. They contend that the order was entered due to the excusable neglect or mistake of their attorney, who failed to file a timely opposition to the summary judgment motion and instead sought a continuance to conduct further discovery to support their opposition. However, plaintiffs have failed to show that they are entitled to relief under either the mandatory or discretionary provisions of section 473(b).

Plaintiffs cite to *Avila v. Chua, supra*, 57 Cal.App.4th 860 in support of their motion under the mandatory provisions of section 473(b). In *Avila*, the Second District Court of Appeal held that mandatory relief should have been granted where the plaintiff failed to file a timely opposition to the defendants' summary judgment motion due to a calendaring error by his attorney. "We find that the mandatory provisions of section 473 apply to appellant's motion here… This case is directly analogous to a default judgment: Due to counsel's late filing of crucial documents, the court decided the matter on the other parties' pleadings. There was no litigation on the merits. Appellant submitted declarations which directly contradicted respondents' most crucial proposed undisputed facts, but those declarations were not considered by the court. Appellant's response was stricken, and the matter proceeded to summary judgment and judgment as if by default… 'The purpose of the attorney affidavit provision "is to relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits."' That purpose is accomplished by the application of the mandatory provisions here." (*Id.* at pp. 867–868, citations omitted.)

However, in *The Urban Wildlands Group v. City of Los Angeles* (2017) 10 Cal.App.5th 993, the Second District Court of Appeal later disapproved its own holding in *Avila* to the extent that *Avila* broadly held that mandatory relief under section 473(b) applied even where there was no default or dismissal entered against the moving party. (*Id*. at pp. 996, 1002.) "Defendant contends the trial court erred by granting the mandatory relief request under section 473, subdivision (b). Defendant argues the section 473, subdivision (b) mandatory relief provision only applies to a default, a default judgment, or a dismissal. We agree. The judgment from which plaintiff seeks relief is not a default, default judgment, or dismissal. Thus, the section 473, subdivision (b) mandatory relief provisions do not apply here. We reverse the order setting aside the judgment." (*Id.* at p. 996.) Therefore, even the Second District Court of Appeal has now chosen not to follow its own decision in *Avila*.

Also, as the court in *Urban Wildlands* noted, there is another line of cases which has read the mandatory portion of section 473(b) more narrowly and found that it only applies to defaults, default judgments, and dismissals, not other types of orders. (*Urban Wildlands, supra*, at p. 998, citing *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1418 and

English v. IKON Business Solutions, Inc. (2001) 94 Cal.App4th 130, 138.) For example, in *English v. IKON Business Solutions*, the Court of Appeal rejected plaintiff's argument that the mandatory relief provisions of section 473(b) applied where plaintiff's counsel had failed to file an opposition to defendant's summary judgment motion, and instead sought a continuance of the hearing to conduct further discovery, which was denied. (*English, supra*, 94 Cal.App.4th at pp. 138, 143-145.) "Contrary to the court in *Avila,* we conclude the mandatory provision of section 473(b) simply does not apply to summary judgments because a summary judgment is neither a 'default,' nor a 'default judgment,' nor a 'dismissal' within the meaning of section 473(b). Therefore, regardless of whether summary judgment was entered against English because of her counsel's mistake or neglect, relief from the judgment was not available to her under the mandatory provision of section 473(b), and the trial court properly denied her motion to vacate the judgment under that provision." (*Id. at p.*138.)

Likewise, the Sixth District Court of Appeal in *Huh v. Wang, supra,* 158 Cal.App.4th 1406 followed *English* and held that the mandatory relief provisions of section 473(b) only apply where the moving party seeks relief from a default, default judgment, or dismissal. "[W]e agree with the *English* court's narrow construction of the mandatory portion of section 473(b). As *English* and its progeny recognize, the mandatory provision 'applies only to relief sought in response to defaults, default judgments or dismissals.' Summary judgments thus are not within the purview of the mandatory relief provision." (*Id.* at p. 1418, citations omitted.)

In the present case, the court intends to follow the line of cases that read the mandatory provisions of section 473(b) narrowly to only afford relief where there has been a default, default judgment, or dismissal entered against the moving party due to the attorney's mistake, surprise, inadvertence or neglect. To adopt the broader reading under *Avila* and its progeny would unduly expand the scope of the statute and allow parties to seek relief in almost any situation where their attorney failed to adequately represent their interests. Such a reading would give attorneys no incentive to act reasonably and diligently in representing their clients and would gut the concept of attorney malpractice, since the attorney could always claim that he or she made a mistake and thus obtain relief from the orders entered against them. It does not appear that the Legislature intended to give incompetent attorneys a broad "get out of jail free" card for every time that they failed to take action to protect their clients' interests. Instead, the mandatory relief provision of the statute should be read narrowly according to its plain language, which only provides for relief where the attorney's mistake, inadvertence, surprise or neglect caused the client to have a default, default judgment, or dismissal entered against them. Such a reading is consistent with the plain language of the statute and the Legislature's intent to provide mandatory relief under only very limited circumstances.

As a result, since plaintiffs here did not have a default, default judgment, or dismissal entered against them, the court finds that the mandatory provisions of section 473(b) do not apply here. Consequently, it intends to deny plaintiffs' motion to the extent that it relies on the mandatory attorney affidavit of fault portion of section 473(b).

Nor have plaintiffs shown that they are entitled to relief under the discretionary part of section 473(b). As discussed above, in order to obtain relief under the

discretionary portion of section 473(b), the moving party must show that the default, order or judgment was entered against it due to its reasonable mistake, inadvertence, surprise or excusable neglect. A court will not grant relief if the default or order was entered as a result of mere carelessness or other inexcusable neglect of the party. (*Luz v. Lopes*, *supra*, 55 Cal.2d at p. 62.)

Here, plaintiffs' counsel states that he failed to file timely opposition to the summary judgment motion due to the fact that he had recently taken on hundreds of new clients in another case against Toyota, that he has been dealing with family medical problems, and that he believed that he had filed a motion to compel defendant's PMK deposition and requested a continuance of the summary judgment motion when he had not done so. He also admits that he failed to check the court's docket to make sure that the motion to compel and request for a continuance had been filed. He did eventually move on an ex parte basis for a continuance of the summary judgment motion, but the continuance was denied by the court for lack of a showing of good cause, as plaintiffs' counsel failed to explain what evidence he hoped to obtain and how it was essential to his opposition.

However, none of these facts show that the summary judgment motion was granted due to counsel's excusable mistake or neglect. Plaintiffs' counsel seems to admit that he was aware of the fact that he needed to file an opposition, but that he made a tactical decision to seek a continuance to conduct further discovery instead. Thus, his failure to file opposition in a timely manner was not a "mistake", as counsel made a conscious decision not to file opposition by the statutory deadline. There was nothing reasonable about completely failing to file a timely opposition to the motion despite counsel's knowledge of the pending deadline. No reasonable attorney would have made a deliberate decision not to oppose a summary judgment motion that was likely to result in dismissal of his clients' case if it was granted. Also, while counsel did request a continuance to conduct further discovery as provided under section 437c(h), he failed to provide any evidence explaining what evidence he hoped to obtain or how it was necessary to oppose the motion for summary judgment. Thus, counsel's actions were not those of a reasonable attorney under the circumstances, and do not constitute excusable mistake or neglect.

Likewise, while counsel claims that he was overwhelmed by the press of business because he recently took on hundreds of new clients, which made it difficult for him to devote his full attention to the present case, his decision to take on hundreds of new clients at same time that he was facing a potentially dispositive motion in the present case was not reasonable or excusable. Plaintiffs' counsel should not have decided to take on hundreds of clients if it meant that he was not able to also adequately represent his existing clients. Also, the press of business alone is not a valid excuse for failing to discharge an attorney's obligations to represent his clients zealously and fully. (*Huh v. Wang*, *supra*, 158 Cal.App.4th at pp. 1423-1424.)

In addition, plaintiffs' counsel claims that he has been dealing with family medical issues that have been causing him anxiety and prevented him from devoting his full attention to the present case. Yet counsel provides very little information about the family medical issues he is facing or how they have affected his ability to represent his clients. His vague statements about "a family medical issue" do not provide the court

with any meaningful information about the problems counsel faced and whether they were serious enough to excuse his failure to oppose the summary judgment motion in a timely manner. While such family problems are unfortunate, they do not necessarily constitute a valid excuse for counsel's failure to file opposition or support his request for a continuance.

Also, counsel seems to admit that he was not diligent in filing a motion to compel the PMK deposition that he believes is crucial to his opposition, as he states that he provided a sample motion to his staff and he believed that it had been filed, but he never checked the court's docket to make sure that it had actually been filed. Again, his failure to prepare and file a supposedly crucial motion that was necessary to obtain evidence to defend against the summary judgment motion and his failure to even check to make sure that the motion had been filed was not the act of a reasonably diligent attorney.

Therefore, the court intends to find that plaintiffs' counsel's actions in failing to file opposition, failing to file a motion to compel, and failing to support his request for a continuance of the summary judgment motion were not the type of excusable mistake or neglect that would justify relief under section 473(b). As a result, the court will deny the motion for relief from the order granting summary judgment in favor of defendant.

Finally, the court intends to deny defendant's request for sanctions against plaintiffs' counsel for bringing a frivolous motion. Defendant contends that plaintiffs' motion is essentially a disguised motion for reconsideration under section 1008, and thus plaintiffs are subject to sanctions for bringing a frivolous motion. (Code Civ. Proc., § 1008, subd. (d).) However, plaintiffs have not expressly moved for reconsideration under section 1008, and thus section 1008(d) does not apply here. Even if the sanctions provision did apply, it only permits sanctions "as allowed by Section 128.7." (Code Civ. Proc., § 1008, subd. (d).) Defendant has not complied with the requirements of section 128.7, including serving a separate motion for sanctions on plaintiffs 21 days before filing the motion with the court and giving plaintiffs a chance to withdraw their allegedly frivolous motion. (Code Civ. Proc., § 128.7, subd. (c)(1).) Therefore, defendant has not shown that it is entitled to sanctions under section 1008(d) and 128.7(c)(1).

Nor is there any similar provision for sanctions under section 473(b), which is the statute that plaintiffs have cited to support their motion for relief from the order. Therefore, there is no statutory basis for the court to grant sanctions here. As a result, the court intends to deny the request for sanctions against plaintiffs and their attorney.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/3/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Potts, et al. v. FCA US, LLC, et al.***
Superior Court Case No. 24CECG04489

Hearing Date: April 10, 2025 (Dept. 501)

Motions: Defendant FCA US LLC's Demurrer to the Complaint

Tentative Ruling:

To continue the demurrer to Thursday, May 8, 2025, at 3:30 p.m., in Department 501, in order to allow the parties to meet and confer *in person or by telephone*, as required. If this resolves the issues, defense counsel shall call the court to take the motions off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before Thursday, May 1, 2025, at 5:00 p.m., stating the efforts made.

Explanation:

Defendant FCA US LLC did not satisfy the requirement to meet and confer prior to filing the demurrer. Code of Civil Procedure, section 430.41 makes it *very* clear that meet and confer *must* be conducted in person or by telephone prior to filing a demurrer. Sending a letter or an email to plaintiffs' counsel requesting a meet and confer session does not shift the burden for meeting and conferring to the plaintiffs. Notably, defense counsel never actually attempted to make a phone call to plaintiffs' counsel. The moving party is not excused from this requirement unless it shows that the plaintiffs failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) The evidence did not show a bad faith refusal to meet and confer on plaintiffs' part that would excuse defendant from complying with the statute.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statutes. The court's normal practice in such instances is to take the motions off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT (Judge's initials) on 4/8/2025 (Date).

(46)

Tentative Ruling

Re: ***Cole Blasingame v. Curtis Blasingame***
Superior Court Case No. 24CECG02127

Hearing Date: April 10, 2025 (Dept. 501)

Motion: by Defendant Curtis Blasingame for Orders Compelling Both Plaintiffs Cole Blasingame and Serena Blasingame to Each Provide Initial Verified Responses to Form Interrogatories, Set One; Special Interrogatories, Set One; Demand for Inspection of Documents, Set One; for Orders Deeming Matters Admitted; and Imposing Monetary Sanctions.

Tentative Ruling:

To grant defendant Curtis Blasingame's request for judicial notice.

To grant defendant Curtis Blasingame's motions to compel initial responses to form and special interrogatories, and demand for inspection of documents **against plaintiff Cole Blasingame**. Within twenty (20) days of service of this order by the clerk, plaintiff Cole Blasingame shall serve objection-free responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Demand for Inspection of Documents, Set One.

To grant defendant Curtis Blasingame's motions to compel initial responses to form and special interrogatories, and demand for inspection of documents **against plaintiff Serena Blasingame**. Within twenty (20) days of service of this order by the clerk, plaintiff Serena Blasingame shall serve objection-free responses to Form Interrogatories, Set One; Special Interrogatories, Set One; and Demand for Inspection of Documents, Set One.

To grant the motions regarding requests for admissions, and order the truth of the matters specified in the Requests for Admissions, Set One, **as to both plaintiffs**, to be deemed admitted.

To impose sanctions **against plaintiff Cole Blasingame** in the amount of $1,190.00, to be paid within twenty (20) calendar days from the date of service of the minute order by the clerk.

To impose sanctions **against plaintiff Serena Blasingame** in the amount of $1,190.00, to be paid within twenty (20) calendar days from the date of service of the minute order by the clerk.

Explanation:

Judicial Notice

Curtis Blasingame ("defendant") seeks judicial notice of the initial Complaint filed in this action by Cole and Serena Blasingame ("plaintiffs") on May 20, 2024, and the Cross-Complaint filed in this action by defendant Curtis Blasingame on July 1, 2024. The court takes judicial notice of these two items pursuant to Evidence Code section 452, subdivision (d), as they are records of the court.

Legal Standard

A propounding party may move for an order compelling response to its propounded interrogatories and/or demand. (Code Civ. Proc., §§ 2030.290, 2031.300.) For a motion to compel initial responses, no meet and confer is required. All that needs to be shown is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. (*Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.) Timely and verified responses are due from the party on which discovery is propounded within 30 days after service, plus additional days for service. (Code Civ. Proc. §§ 2030.260, 2031.260, 1013.) Failing to respond to discovery within the 30-day time limit waives objections to the discovery, including claims of privilege and work product protection. (Code Civ. Proc., §§ 2030.290 subd. (a), 2031.300 subd. (a).)

If a party fails to serve a timely response to requests for admission propounded upon that party, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction. (Code. Civ. Proc., § 2033.280, subd. (b).) Objections are waived including those based on privilege and work product. (*Id*., subd. (a).) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. (*Id*., subd. (c).)

Application

Here, defendant served separate sets of discovery on both plaintiffs via regular USPS mail on January 8, 2025, each set consisting of (1) Form Interrogatories, Set One; (2) Special Interrogatories, Set One; (3) Requests for Production of Documents, Set One; and (4) Requests for Admission, Set One. (Balch Decls., ¶¶ 5, 6, Exh. A.) Although not required, defendant sent letters requesting objection-free responses to discovery and offered an extension to February 26, 2025. (*Id*., ¶ 8, Exh. B.) Responses were not received by the extended deadline and were not received prior to the filing of these motions. (*Id*., ¶ 9.) Plaintiffs have each had ample time to respond to the discovery propounded by defendant and have not done so. Defendant filed the instant motions on February 28, 2025. Plaintiffs have not filed oppositions to the motions.

Based on the foregoing, the motions to compel initial responses from both plaintiffs Cole Blasingame and Serena Blasingame will be granted, and the matters found in the requests for admissions deemed admitted.

Monetary Sanctions

The court may award sanctions against a party that fails to provide discovery responses. (Code Civ. Proc. § 2023.010, subd. (d).) The court may award sanctions in favor of a party who files a motion to compel discovery, even if no opposition to the motion was filed. (Cal. Rules of Court, rule 3.1348(a).) The court may impose a monetary sanction for misuse of the discovery process, an amount to encompass reasonable expenses (including attorney's fees). (Code Civ. Proc., § 2023.030, subd. (a).) Pursuant to Code of Civil Procedure section 2033.280, subdivision (c), it is *mandatory* to impose a monetary sanction on the party (or attorney) whose failure to serve a timely response to requests for admission necessitated this motion requiring the court to issue an order. (Code Civ. Proc., § 2033.280, subd. (c).)

Here, plaintiffs failed to provide responses to defendant's propounded discovery. Defendant is entitled to monetary sanctions. However, the amount of sanctions may be reduced. The motions against each plaintiff are straightforward and without issue, and arise from the same set of facts. The motions are virtually identical. Thus, it is reasonable to allow for 2 hours of preparation of each set of motion papers, calculated at the attorney's rate of $475.00 per hour, and to allow for recovery of the motion filing fees.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/8/2025.
(Judge's initials) (Date)