

Tentative Rulings for September 22, 2026
Department 403

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.

25CECG02798	<i>Sandoval v. City of Parlier</i> is continued to Tuesday, September 29, 2026, at 3:30 p.m. in Department 403.
25CECG02879	<i>Fowler Complex, LLC v. Hyde</i> is continued to Tuesday, September 29, 2026, at 3:30 p.m. in Department 403.
25CECG04899	<i>Persevere Lending, Inc. v. Nino</i> is continued to Tuesday, September 29, 2026, at 3:30 p.m. in Department 403.

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Tentative Rulings for Department 403

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Tentative Ruling

Re: ***Kulkarni v. Hardcastle, et al.***
Superior Court Case No. 26CECG01307

Hearing Date: September 22, 2026 (Dept. 403)

Motions (x3): by Defendants David Hardcastle, John Giarmarco, and Vanessa Medlock to Set Aside Defaults and by Defendant David Hardcastle to Quash the Service of Summons

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., §§ 473, subds. (b), (d); 473.5; 418.10.)

Explanation:

Defendants David Hardcastle, John Giarmarco, and Vanessa Medlock (hereinafter "Defendants") move to set aside the defaults taken against them pursuant to Code of Civil Procedure section 473, subdivision (b) for excusable neglect. Defendant Hardcastle further moves to set aside the default pursuant to Code of Civil Procedure section 473.5 and to quash the service of summons pursuant to Code of Civil Procedure section 418.10, on the ground that default resulted from defective service. Relief pursuant to Code of Civil Procedure section 473, subdivision (d) is denied as premature, since a judgment has not yet been rendered in this case.

Relief Pursuant to Code of Civil Procedure section 473, subdivision (b)

The trial court has broad discretion to vacate the judgment and/or the clerk's entry of default that preceded it. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.) 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. Application for this relief ... shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).) The outside time limit for seeking relief under Code of Civil Procedure, section 473, subd. (b) is six months. This limit is jurisdictional in the sense that the court has no power to grant relief after this time regardless of whether an attorney affidavit of fault is filed or how reasonable the excuse for the delay. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 928.)

The burden is on the moving party to show that the neglect was excusable. "[T]he 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.)

Defendants David Hardcastle, John Giarmarco, and Vanessa Medlock each indicate that the delay in defending against the action was a result of their misunderstanding of the time to respond. Each defendant believed that additional time was available to respond. However, the summons served upon each defendant states as follows:

NOTICE! You have been sued. The court may decide against you without you being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case.

(Summons, filed on Mar. 23, 2026.)

Although Defendants contend that they were self-represented and unfamiliar with the procedural requirements, the information was provided in plain and simple terms on the summons. Defendants' election to proceed in propria persona does not constitute excusable neglect. Nor does it excuse Defendants from adherence to the rules of civil procedure. If this were the case, "no judgment against a self-represented party would ever be final." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1264.) A reasonable person who was aware that an action had been filed against him would not turn a blind eye to the action, simply because he assumed without any basis that he had more time to act. This is especially true where the summons plainly states a definitive timeframe of 30 days to respond in writing. Nor would a reasonable person have neglected to read the summons and complaint served upon him.

Therefore, the motion for relief under Code of Civil Procedure section 473, subdivision (b) is denied.

Relief Pursuant to Code of Civil Procedure section 473.5

Code of Civil Procedure section 473.5 provides that "[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...." he may move to set it aside if he acts within two years after entry of the default judgment and shows that his " ... lack of actual notice in time to defend the action was not caused by his avoidance of service or inexcusable neglect." (Code Civ. Proc., § 473.5, subds. (a), (b).)

Defendant Hardcastle does not contend that he did not receive actual notice of the summons. Rather, Defendant Hardcastle appears to be challenging the service of summons to his wife at his address. Code of Civil Procedure section 473.5 is not the proper statute to support this challenge. The challenge to the service of summons is addressed below.

Quash Service of Summons

Defendant Hardcastle argues that he was not personally served with the summons and complaint. He indicates that he resides at the service address: 618 E. Home Avenue, Fresno, CA 93728, and that the documents were delivered to his wife.

"If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, . . . in the presence of a competent member of the household . . . who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left." (Code Civ. Proc., § 415.20, subd. (b).)

"The filing of a proof of service creates a rebuttable presumption that the service was proper." (*Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795.) A declaration of service by a registered process server establishes a presumption that the facts stated in the declaration are true. (Evid. Code, § 647.)

The court takes judicial notice of its own docket and notes that a proof of service of summons along with a declaration of due diligence and proof of service by mail are filed on May 11, 2026, to support the service of summons and the complaint to Defendant Hardcastle by substitute service. The proof of service of summons, declaration of due diligence, and proof of service by mail are each signed by a registered process server. The proof of service of summons provides that Defendant Hardcastle was served by substitute service. The documents were delivered to his wife, Laura Hardcastle at his residence, and the process server informed her of the general nature of the papers. (See the Proof of Service of Summons filed on May 11, 2026.) The declaration of due diligence indicates three unsuccessful attempts at personal service at his residence before the documents were served by substituted service on April 15, 2026. (See the Declaration of Due Diligence, filed on May 11, 2026.) Additionally, the process server indicates that the documents were mailed to Defendant Hardcastle's address by First Class mail with postage prepaid. (See the Proof of Service by Mail, filed on May 11, 2026.)

The proof of service of summons complies with the applicable statutory requirements, and therefore, the service was proper.

Therefore, the motions to set aside default and to quash service of summons are denied.

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: SMC **on** September 21, 2026.
(Judge's initials) (Date)

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Tentative Ruling

Re: ***Pismo's of Fresno LLC v. Villagio Shopping Center LLC et al.***
Superior Court Case No. 25CECG04448

Hearing Date: September 22, 2026 (Dept. 403)

Motion: Motion to Quash Subpoena

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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: SMC on September 21, 2026.
(Judge's initials) (Date)