

**Tentative Rulings for September 23, 2021**  
**Department 403**

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**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).)**

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

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**(Tentative Rulings begin at the next page)**

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## **Tentative Rulings for Department 403**

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(34)

**Tentative Ruling**

Re: ***Grassy Sprain Group, Inc. v. Hickman***  
Superior Court Case No. 20CECG03660

Hearing Date: September 23, 2021 (Dept. 403)  
**If oral argument is timely requested, the matter will be heard on Thursday, September 23, 2021 at 3:00 p.m. in Dept. 403**

Motion: Set aside default; Motion to Quash

**Tentative Ruling:**

To grant Defendant Hickman's motion to set aside the default and default judgment entered against him. (Code Civ. Proc. §473.) Defendant Hickman to file his answer within 5 days of the clerk's mailing of the minute order.

To deny the motion to quash as moot.

**Explanation:**

The court has power to set aside a judgment that is void as a matter of law. (Code Civ. Proc., § 473, subd. (d).) A judgment may be void as a matter of law for many reasons, including lack of or improper service of summons and lack of personal jurisdiction. (See *Rogers v. Silverman* (1989) 216 Cal.App.3d 1114, 1120–1121; see also *Ellard v. Conway* (2001) 94 Cal.App.4th 540.)

Also, doubtful cases are usually resolved in favor of granting relief “because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in the favor of the party seeking relief from default.” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 superseded on other grounds in *Wilcox v. Birtshistle* (1999) 21 Cal.4th 973, 979; *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 696.)

“Compliance with the statutory procedures for service of process is essential to establish personal jurisdiction. Thus, a default judgment entered against a defendant who was not served with a summons in the manner prescribed by statute is void. Under section 473, subdivision (d), the court may set aside a default judgment which is valid on its face, but void, as a matter of law, due to improper service.” (*Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544, citations, quotation marks, and brackets omitted.)

Though the filing of a proof of service creates a rebuttable presumption that service was proper (*Lebel v. Mai* (2012) 210 Cal.App.4th 1154, 1163), “a declaration of non-service if credited by the trial court can rebut the presumption of proper service[.]” (*Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 941, fn. 6; see *Peralta v. Heights Medical Center, Inc.* (1988) 485 U.S. 80, 84 [“a judgment entered without notice or service is constitutionally infirm.”].)

Where “service of a summons has not resulted in actual notice to a party in time to defend the action and a default ... has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.” (Code Civ. Proc. §473.5(a); see *Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180 [defendant need not show that he or she did anything improper, defendant “simply asserts that he or she did not have actual notice”].) Actual knowledge is to be strictly construed, to support the policy of liberally granting relief so that cases may be resolved on their merits. (*Ellard*, supra, 94 Cal.App.4th at p. 547.) It has been held that even where a defendant has knowledge of an action, it is inadequate to show “actual knowledge” if the defendant has not received process. (*Olvera v. Olvera* (1991) 232 Cal.App.3d 32, 40.)

Last, “it is the policy of the law that every case should be heard on its merits, and section 473 is a remedial provision to be liberally construed to the end that cases be disposed of upon their merits; that for these reasons a reviewing court listens more readily to an appeal for an order denying relief than one granting relief; and that where there is any doubt as to whether a default should be set aside such doubt should be resolved in favor of the application.” (*Gore v. Witt* (1957) 149 Cal.App.2d 681, 685.)

In the instant action, Plaintiff substitute served Defendant by serving “Brian Doe,” who as supposedly a co-occupant. Service on “Brian” appears to have been technically proper, as he was over the age of 18, and the address is Defendant Hickman's actual residence.

Defendant submits his own declaration, in which he states he did not receive any documents from Plaintiff regarding the instant action, including the summons and complaint (Hickman decl., ¶¶ 9-10, 17); and that until receiving correspondence regarding the judgment against him from Plaintiff's counsel on April 12, 2021, he had no knowledge that an action had been filed against him (Id. at ¶¶ 9-10.) Defendant states that he never received service of process. (Id. at ¶ 17.) Plaintiff disputes this, however the court will resolve the dispute in favor of the party seeking relief from default.

Defendant's default was entered on April 7, 2021 and judgment was entered on April 9, 2021. It appears from Defendant's declaration that the default and default judgment are void as a matter of law due to improper service and lack of actual notice. Accordingly, Defendant's motion is granted.

In light of the court granting the motion to set aside the judgment and ordering Defendant's answer to be filed within 5 days of the clerk's mailing of this order, the motion to quash service is moot as Defendant is submitting to the jurisdiction of the court.

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: KCK on 09/21/21  
(Judge's initials) (Date)