

Tentative Rulings for May 15, 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.

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Tentative Rulings for Department 503

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(20)

Tentative Ruling

Re: **Clark v. Pritchard et al.**
Superior Court Case No. 21CECG03472

Hearing Date: May 15, 2024 (Dept. 503)

Motion: Plaintiff's Motion for Relief From the Court's Discovery Order of August 4, 2023

Tentative Ruling:

To grant and set aside the discovery order of August 4, 2023, and set the matter for pretrial discovery conference, on the condition that plaintiff agrees to extend defendants' deadline for filing a motion to compel further responses 20 days from the date of said pretrial discovery conference. The court sets a pretrial discovery conference on June 14, 2024 at 10:30 a.m., in Department 503. Should plaintiff fail to participate in this conference or fail to agree to extend defendants' motion filing deadline, the court intends to reinstate its August 4, 2023, order.

Explanation:

Pursuant to Code of Civil Procedure section 473, subdivision (b) ("473(b)"), plaintiff seeks relief from the court's order entered on August 4, 2023, which required plaintiff to respond to various requests for production of documents, form interrogatories and special interrogatories, as a result of plaintiff's counsel's failure to appear at the scheduled Pretrial Discovery Conference. Plaintiff's counsel filed opposition to defendant's request for a Pretrial Discovery Conference, and was aware of the date the court had initially set for said conference, and was also aware of the continuance granted, which set the conference for August 4, 2023. Counsel states he failed to appear because even though his office had calendared the date in the office's calendar program, through some malfunction in that program, the date disappeared from the calendar, so counsel's staff failed "to arrange the remote appearance" and failed to inform counsel of the upcoming hearing.¹

The court denied plaintiff's motion brought under Code of Civil Procedure section 1008 because there was no showing of new or different facts or circumstances. The court noted, however, that the facts set forth appear to be showing that counsel made an excusable mistake, or was guilty of excusable neglect. Accordingly, plaintiff filed the instant motion for relief under section 473(b).

The trial court has discretion under section 473(b) on a showing of mistake, inadvertence, surprise or excusable neglect to grant relief from a judgment, dismissal or other order based on its evaluation of the nature of the mistake

¹ Had a request for remote appearance been requested it would not have been granted, as this court requires in-person appearances at Pretrial Discovery Conferences, and this was stated on the court's order issued on May 30, 2023.

or error alleged and the justification proffered for the conduct that occurred. “The general underlying purpose of section 473(b) is to promote the determination of actions on their merits.” (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 838, 189 Cal.Rptr.3d 824, 352 P.3d 391; accord, *Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 255–256, 121 Cal.Rptr.2d 187, 47 P.3d 1056 [“ ‘It is well settled that appellate courts have always been and are favorably disposed toward such action upon the part of the trial courts as will permit, rather than prevent, the adjudication of legal controversies upon their merits.’ [Citation.] Thus, ‘the provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.’ ”].)

(*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 928 [fn omitted].)

Generally, section 473(b) does not apply to discovery issues, since “the Legislature’s use of section 473 language in parts of the discovery act evidences its intent to supplant the application of section 473 pro tanto.” (*Zellerino v. Brown* (1991) 235 Cal.App.3d 1097, 1107.) However, where there is no analogous discovery statute providing for relief from a court order, such relief may be obtained under section 473(b), since the broad language of that statute (i.e., providing for relief from judgment, dismissal, or *other proceeding*) includes *discovery proceedings*. (*Id.* at p. 1104 (section 473 relief granted for untimely demand for expert witness exchange because no discovery act provision for such relief).) Thus, it appears section 473(b) does apply here, since the court’s order was essentially a sanction for defendant’s failure to respond to a request for a discovery conference.² But note: the provisions for mandatory relief based on an attorney affidavit of fault do not apply because the neglect did not result in default, default judgment, or dismissal. (*Shayan v. Spine Care & Orthopedic Physicians* (2020) 44 Cal.App.5th 167, 170.)

As the court noted in denying the motion for reconsideration that the circumstances described by plaintiff’s counsel show that counsel made an excusable mistake, or was guilty of excusable neglect. The court will exercise its discretion in favor of granting relief from the August 4, 2023 order. There is no prejudice to defendants, though plaintiff will be on a short leash as far as this discovery goes, as defendant has been pursuing it since late 2022. No further mistakes from plaintiff’s counsel’s office will be excused.

Section 473(b) provides that the court’s order can be “on any terms as may be just.” The parties do not address the deadline for defendants to file motions to compel further responses, but given the delays in obtaining this relief, it is only just that plaintiff agree to extend the motion filing deadline as a condition to granting this motion.

Defendants’ objections to the Meislin Declaration are overruled. As counsel stated that he investigated the matter, his statements about what transpired are not without foundation. Defendants’ requests for judicial notice are granted.

² Pursuant to The Superior Court of Fresno County, Local Rules, Rule 2.1.17C, failure to timely file an opposition to a pretrial discovery conference request “is considered a refusal to participate.”

