

**Judge Mosbarger – Law & Motion – Wednesday, October 9, 2024 @ 9:00 AM  
TENTATIVE RULINGS**

**1. 23CV03270 SMITH, KAMERON V. FADALE, DAMON ET AL**

*EVENT: Damon Fadale's Motion to Set Aside Default Judgment*

The Motion was filed on September 20, 2024, which is only 12 Court days before the hearing. An additional 4 Court days', plus 5 additional calendar days for service by mail is required. See, *Code of Civil Procedure* §1005(b). Notice is therefore insufficient, and the Motion is denied. However, even if the Court were to consider the Motion given the lack of proper notice, the filing requirements for a motion to set aside are mandatory and jurisdictional. See *Code of Civil Procedure* §473(b); *Manson, Iver & York v Black* (2009) 176 Cal.App.4th 36, 42; *Sporn v Home Depot, Inc.* (2005) 126 Cal.App.4th 1294; See also, *Pulte Homes Corp. v Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 273 (trial court could not set aside default when motion for relief from default and default judgment was filed less than 6 months after entry of default judgment but more than 6 months after entry of default; it also could not set aside default judgment because doing so would be "an idle act," since defendant would still be in default and could not oppose entry of new default judgment). Here, the deadline to file and serve a motion to set aside the default was July 11, 2024. However, the instant motion was not filed and served until September 20, 2024. Thus, the motion is untimely, the Court lacks jurisdiction, and the motion is denied on that basis as well.

**2-3. 24CV00006 MCENDARFER, JACOB V. MASULA, LARRY ERNEST, DC ET AL**

*EVENTS: (1) Defendant Larry Ernest Masula, D.C.'s Motion to Compel Responses to Form Interrogatories, Set One; and Request for Monetary Sanctions*

*(2) Defendant Larry Ernest Masula, D.C.'s Motion to Deem Admitted Defendant's Requests for Admission, Set One; and Request for Monetary Sanctions*

Defendant Larry Ernest Masula, D.C.'s Motion to Compel Responses to Special Interrogatories, Set One; and Request for Monetary Sanctions is unopposed and is GRANTED. Plaintiff Jacob McEndarfer shall provide verified responses without objection to Defendant Larry Ernest Masula, D.C.'s Form Interrogatories, Set One within 14 days' notice of this order. Additionally, the Court awards sanctions against Plaintiff Jacob McEndarfer in the amount of \$1,140 to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by Defendant.

Defendant Larry Ernest Masula, D.C.'s Motion to Deem Admitted Defendant's Requests for Admission, Set One; and Request for Monetary Sanctions is unopposed and is GRANTED. Additionally, the Court awards sanctions against Plaintiff Jacob McEndarfer in the amount of \$1,140 to be paid within 30 days' notice of this order. The Court will sign the form of order submitted by Defendant.

**4. 24CV02551 IN RE: DENNIS, CURTIS ARRON**

*EVENT: Petition for Change of Name*

If proper proof of publication is submitted at or before the hearing, the Petition will be granted.