

**Judge Mosbarger – Law & Motion – Wednesday, October 16, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 16CV00411 JOINER, MATT G V. NEHER, TIMOTHY L ET AL

EVENT: Motion to Set Aside the Judgment

Plaintiff's Request for Judicial Notice is granted. *Code of Civil Procedure* §473(b) requires that "[a]pplication for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." Without a proposed Opposition to the Plaintiff's Motion for Summary Judgment, the Court lacks authority under *Code of Civil Procedure* §473(b) to grant such relief as the statute uses the mandatory language that "... otherwise the application shall not be granted." *Id.* Thus, the Motion is denied on this basis.

However, even if the Court were to reach the merits of the Motion, in its discretion, the Motion would likewise be denied. Under *Code of Civil Procedure* §473(b), illness of the party that actually disables the party from timely compliance with the rules of procedure is excusable neglect if the motion for relief is made as soon as the disability terminates or attenuates to the extent that a reasonable person under similar conditions would take action for relief. See *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 909. The court is to examine the nature of the illness and then consider if the illness was so disabling that the neglect consisted only of acts or omissions that a reasonably prudent [party] in similar circumstances would commit. See, e.g., *Transit Ads, Inc. v. Tanner Motor Livery, Ltd.* (1969) 270 Cal.App.2d 275, 286–287. The application for relief from judgment or order due to excusable neglect resulting from illness of the party must detail the nature of the illness or be accompanied by a doctor's declaration. See *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905 (statement insufficient that did not state severity of condition or in what manner it limited party's activity, and no doctor's declaration confirmed statement).

Here, the Court's reluctance and ultimate declination to give substantial weight to the evidence presented by the Defendant is not a bias toward the Defendant, as is argued in the Motion, but a recognition and acknowledgment of the Defendant's prior history of being dishonest with the Court and his prior attempts to mislead the Court, all of which is set forth in great detail in the Court's Ruling on Plaintiff's Motion for Summary Judgment. The Court finds the evidence submitted in support of Defendant's application for relief from judgment insufficient in that it does not state the severity of the Defendant's condition, the matter in which it limited Defendant's activity. The generalities set forth in the moving papers are insufficient and as indicated, the Court questions the veracity of the information and evidence presented. Additionally, in relation to Defendant's request for additional time to prepare and file a further Opposition based upon Defendant's current medical condition, the Court notes that this Motion was initially filed on July 21, 2020 and has been pending for over four years, and the Court finds that Defendant has had sufficient time to prepare a substantive Opposition.

Therefore, as indicated, even if the Court were to reach the merits of the Motion, in its discretion, the Motion would be denied. Counsel for the Plaintiff shall submit a form of order within two weeks. The Court reminds counsel and the parties that should oral argument be requested they must comply with Butte County Local Rule 2.9 and California Rules of Court Rule 3.1308(a)(1). Absent compliance with the Court's tentative

call-in procedure, the Court will not entertain oral argument at the hearing on October 16, 2024.

2. 19CV02874 SCILIGO, JOSEPH V. IDENTITY SOURCE, INC ET AL

EVENT: Motion to be Relieved as Counsel

The Motion to be Relieved as Counsel is granted, effective upon the filing of the proof of service of the signed order upon the client. The Court will sign the form of order submitted by counsel.

3-4. 22CV01169 RODRIGUEZ, EFRAIN V. HOISINGTON, TERILYN S. ET AL

EVENTS: (1) Motion to be Relieved as Counsel

(2) Defendants' Motion for Dismissal

The Motion to be Relieved as Counsel is granted and the Court will sign the form of order submitted by counsel. In regard to the Defendants' Motion for Dismissal, Defendants cite to *Code of Civil Procedure* §583(a), which was repealed in 1985. The relevant statutory authority for discretionary dismissal after two years for delay in prosecution are *Code of Civil Procedure* §583.420 and Cal Rules of Ct 3.1342. However, Defendants have failed to satisfy the procedural requirements set forth therein, including failure to provide sufficient notice (Cal Rules of Ct 3.1342(a)), and failure to establish all matters relevant to a proper determination of the motion (Cal Rules of Ct 3.1342(e) – specifically “... (3) The extent to which the parties engaged in any settlement negotiations or discussions; (4) The diligence of the parties in pursuing discovery or other pretrial proceedings, (5) The nature and complexity of the case; (6) The law applicable to the case, including the pendency of other litigation under a common set of facts or determinative of the legal or factual issues in the case; (7) The nature of any extensions of time or other delay attributable to either party; (8) The condition of the court's calendar and the availability of an earlier trial date if the matter was ready for trial; (9) Whether the interests of justice are best served by dismissal or trial of the case; and (10) Any other fact or circumstance relevant to a fair determination of the issue.”). Defendants' Motion for Dismissal is denied.

5. 23CV01193 JAKELA, INC V. WRECKING CREW DEMOLITION, INC

EVENT: Motion for Leave to File First Amended Complaint

The Motion is unopposed and is granted. The Court will sign the form of order submitted by counsel.

6-7. 23CV02177 HELENA AGRI-ENTERPRISES, LLC V. BASSI & DHILLON, INC ET AL

EVENTS: (1) Order of Examination – Bassi & Dhillon, Inc.

(2) Order of Examination – Harjit Dhillon aka Harjit Singh Dhillon

The Court will swear in the Judgment Debtor for examination.

8. 24CV03096 IN RE PETITION OF: DRB CAPITAL, LLC

EVENT: Petition for Approval for Transfer of Structed Settlement Payment Rights

The Petition is granted as it appears to the Court that the transfer complies with the requirements of Insurance Code §10137 and is in the best interest of the Real Party in Interest. Petitioner shall submit a form of order within two weeks.