May 22, 2026, Civil Law & Motion Tentative Rulings

1. CU0001938 U.S. Bank National Association vs. Joseph A. Miller, DMD, Inc., et al.

Defendant Joseph A. Miller's motion for relief from default/default judgment and for leave to file an answer and cross-complaint is denied.

Legal Standard

Defendant moves for relief from the default and default judgment under Code of Civil Procedure section 473(b). Section 473(b) provides for discretionary relief from a default or default judgment that has been entered due to mistake, surprise, inadvertence, or excusable neglect. Code Civ. Proc. § 473(b). The party seeking relief must bring his or her motion within a reasonable time, not to exceed six months from the date of entry of the default or default judgment. *Ibid*. Also, "[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…." *Ibid.*

" '[T]he 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.' " *Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 256. "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233. "Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" *Zamora, 28* Cal. 4th at 256 (internal citations omitted).

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276. However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. *Luz v. Lopes* (1960) 55 Cal.2d 54, 62.

In addition, the moving party must show that they were diligent in seeking relief from the default, and that they sought relief within a reasonable time after they learned of the default:

> This court has held that what a 'reasonable time' is in any case depends primarily on the facts and circumstances of each individual case, but definitively requires a showing of diligence in making the motion after the discovery of the default. In other words, the moving party must not only make a sufficient showing of 'mistake, inadvertence, surprise, or neglect' in order to excuse the original default, but must also show diligence in filing its application under section 473 after learning about the default. If there is a delay in filing for relief under section

> 473, the reason for the delay must be substantial and must justify or excuse the delay.

Stafford v. Mach (1998) 64 Cal.App.4th 1174, 1181 (citations omitted).

Failure to explain a substantial delay in seeking relief warrants denial of the motion to set aside. *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144-1145. While the trial court has discretion as to whether to grant or deny relief, there must be some explanation for the delay in order to support an order granting relief. *Id*. at 1145. Indeed, "[n]umerous courts have found no abuse of discretion in granting relief where the section 473 motions at issue were filed seven to 10 weeks after entry of judgment." *Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 34; *see Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144-1145. (abuse of discretion to grant relief from dismissal where moving party failed to explain the seven-week delay between learning of the dismissal and seeking relief). "A delay is unreasonable as a matter of law … when it exceeds three months and there is no evidence to explain the delay." *Minick*, 3 Cal.App.5th at 34; *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1422 (citations omitted) (affirming trial court's denial of motion to set aside judgment where there was an unexplained delay of more than three months between entry of judgment and filing of motion to set aside).

Analysis

As a preliminary matter, Defendant's motion to set aside is procedurally defective. Under section 473(b), "[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*…." Code Civ. Proc. § 473(b) (italics added). The language of the statute is mandatory. Here, Defendant indicates he has filed a proposed answer attached to his counsel's declaration but has failed to submit the same. As such, relief is inappropriate on this ground alone.

Secondly, Defendant has not explained why he delayed so long before seeking to set aside the default/default judgment or how he has been reasonably diligent with respect to seeking relief as to the same. Defendant was clearly aware that he had been sued in May 2025. Defendant was given notice of non-sufficient funds in connection with his answer on July 25, 2025, and was further advised that his answer was stricken on September 5, 2025. Defendant was specifically served with a September 8, 2025, request for entry of default. Default was entered against Defendant on September 8, 2025, and judgment by default entered on December 12, 2025. Defendant did not file his motion to set aside the default until March 4, 2026. Defendant fails to address when or how he learned of the default entered against him (although he was presumably on notice of the possibility as of September 2025). Moreover, Defendant has not offered, as required, any credible explanation for the delay of almost six months between entry of the default in September 2025 and filing the March 2026, motion to set aside (or the delay of almost three months between entry of default judgment in December 2025 and filing of the motion). On these facts, Defendant has not demonstrated a substantial justification or excuse for the unreasonable delay.

Lastly, Defendant has failed to meet his burden of showing that he is entitled to relief due to mistake, surprise, inadvertence, or excusable neglect. Defendant declares he did not have personal counsel to represent him, he filed his answer without knowing he was required to pay a filing fee, and he was not advised his answer would be stricken and his default entered if he did

not do so. Miller Decl., ¶¶ 2-4. Defendant argues "a lay person would have no knowledge of the procedural steps that were required of him…." Mot., 2:17-18. The Court disagrees.

A self-represented party "is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys." *Williams v. Pacific Mutual Life Ins. Co.* (1986) 186 Cal.App.3d 941, 944. Thus, as is the case with attorneys, self-represented litigants must follow correct rules of procedure. *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.

In addition, Defendant was mailed a notice of non-sufficient funds on July 25, 2025, was separately served with a September 5, 2025 order striking the Answer due to non-payment of funds, and was separately served with a September 8, 2025 request for entry of default. Default was subsequently entered on September 8, 2025. This notwithstanding, Defendant did nothing to address the situation until engaging counsel at some unknown time who then filed a request for relief in March 2026. On this record, there has been no credible showing of excusable mistake, surprise, inadvertence or neglect.

In summary, the Court denies the motion to set aside the default and default judgment.

2. CU0002209 Julli Conde vs. City of Nevada, et al.

The motion of Defendant City of Nevada City ("City") to compel responses to discovery, deem requests for admission admitted, and for monetary sanctions is withdrawn from calendar as moot in light of Plaintiff's dismissal of the City on May 13, 2026.

3. CU0002477 Blanche Sherr vs. Cascade Living Group

Defendants' Motion to Compel Arbitration

Defendants Cascade Living Group–Grass Valley, LLC's and Cascade Living Group Management, LLC's motion to compel arbitration and request to stay action is denied.

Legal Standard

California law strongly favors arbitration finding it a speedy and relatively inexpensive manner of dispute resolution. *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125; *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97. A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. Code Civ. Proc. § 1291.2. The court must grant the petition to compel arbitration unless it finds: the right to compel arbitration has been waived by the moving party; grounds exist for the revocation of the agreement; or litigation is pending that may render the arbitration unnecessary or create conflicting rulings on common issues. Code Civ. Proc. § 1281.2.

Private arbitration is a matter of agreement between the parties and is accordingly governed by contract law. *Platt Pacific, Inc. v. Andelson* (1993) 6 Cal.4th 307, 313. Under both federal and state law, a threshold question for any petition to compel arbitration is whether there exists an agreement to arbitrate. *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396. Once the party seeking arbitration has met its burden proving the existence of a valid arbitration agreement, the

"party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense." *Ruiz v. Moss Bros. Auto Group, Inc.* (2014) 232 Cal.App.4th 836, 842. If the court determines an agreement to arbitrate the controversy between the parties exists, the court "shall" compel arbitration. Code Civ. Proc., § 1281.2; 9 U.S.C., § 4. It is the petitioner that carries this initial burden of proving, by a preponderance of the evidence, the existence of a valid arbitration agreement. *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972. "'[A] party cannot be required to submit to arbitration any dispute which he has not agreed so to submit.'" *AT&T Technologies v. Communications Workers* (1986) 475 U.S. 643, 648; *see Cronus Investments, Inc. v. Concierge Svcs.* (2005) 35 Cal.4th 376, 384 85.

Discussion

Plaintiff disputes the existence of the arbitration agreement. Specifically, Plaintiff argues her son, Gregory Sherr, only held a Power of Attorney for Health Care at the time the arbitration agreement was signed, and because he did not have general authority over Plaintiff's financial and legal affairs when he signed the arbitration agreement, no enforceable arbitration agreement exists. The Court agrees.

Here, Defendants submit evidence that on January 5, 2024, Gregory Sherr signed a voluntary arbitration agreement which included a 30-day revocation clause, acting as Plaintiff's representative. Parker Decl., Ex. A, pp. 10-11. Defendants aver, "Greg Sherr signed the arbitration agreement on behalf of" Plaintiff. Parker Decl., ¶ 4. Defendants also submit a California Uniform Statutory Form Power of Attorney ("General POA") granting Gregory Sherr general authority over Plaintiff's financial and legal affairs, executed on *February 1, 2025*. Scharg Decl., ¶ 4, Ex. B, Feb. 2025 Legal POA. That instrument grants Gregory Sherr authority over claims and litigation. *Ibid.* Finally, Defendant includes a "Power of Attorney for Health Care and Advance Health Care Directive" ("Health Care POA") designating Gregory Sherr "as my agent, with my Power of Attorney to make health care decisions for me," dated October 27, 2023. Scharg Decl., Ex. B, Oct. 2023 Healthcare POA.[1]

Defendants argue the February 1, 2025 General POA gave Gregory Sherr authority to agree to arbitrate. The Court cannot agree. At bar, Defendants have only provided evidence Gregory Sherr had power of attorney over health care decisions *at the time* he signed the arbitration agreement in January 2024. The Health Care POA authorized Gregory Sherr "to make all health care decisions" for Plaintiff. Scharg Decl., Ex. B, Oct. 2023 Healthcare POA. A "health care decision" "excludes an optional, separate arbitration agreement that does not accomplish health care objectives." *Harrod v. Country Oaks Partners, LLC* (2024) 15 Cal.5th 939, 965. "[T]he facility's owners and operators may not, therefore, rely on the agent's execution of that second agreement to compel arbitration of claims arising from the principal's alleged maltreatment that have been filed in court." *Id*. at 947; *see Theresa D. v. MBK Senior Living LLC* (2021) 73 Cal.App.5th 18, 29-31. Therefore, at the time the arbitration agreement was signed on January 5,

[1] Defendants rely on the February 1, 2025, POA to establish the existence of an arbitration agreement. Mot., 4:14-16 ("Plaintiff's Power of Attorney, Greg Sherr, executed the Agreement on behalf of Plaintiff, which is squarely within the rights granted by the Power of Attorney executed on February 1, 2025."). Defendants do not rely on the October 27, 2023, POA.

2024, Gregory Sherr only held authority to make "health care decisions" on behalf of Plaintiff; he did not hold authority over claims and litigation until February 1, 2025.

Defendant failed to establish the existence of a valid and binding arbitration agreement. As such, the motion is denied.

Plaintiff's Motion for Trial Preference

Plaintiff Sherr's motion for trial preference is granted.

Legal Standard

Under Code of Civil Procedure section 36, if a party to a civil action is over 70 years of age, that party may "petition the court for a preference, which the court shall grant" upon a finding that the party "has a substantial interest in the action as a whole" and the "health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." Code Civ. Proc. § 36(a)(1)-(2). In addition, a party who reaches 70 years of age during the pendency of an action may file and serve a motion for preference. Code Civ. Proc. § 36(c)(2). A motion for preference "may be granted only upon an affirmative showing by the moving party of good cause based on a declaration served and filed with the motion or application." Cal. Rules of Court, rule 3.1335(b).

Whenever a litigant is 70 years old and qualifies for protection, Code of Civil Procedure § 36(a), "is mandatory and absolute in its application and does not allow a trial court to exercise the inherent or statutory general administrative authority it would otherwise have." *Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 692. In addition, the "[f]ailure to complete discovery or other pre-trial matters does not affect the absolute substantive right to trial preference for those litigants who qualify for preference under subdivision (a) of section 36. The trial court has no power to balance the differing interests of opposing litigants in applying the provision. The express legislative mandate for trial preference is a substantive public policy concern which supersedes such considerations." *Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085-1086.

Evidentiary Objections

Defendants' evidentiary objections are overruled in their entirety. *See, e.g., Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 534 ("a motion under subdivision (a) may be supported by nothing more than an attorney's declaration 'based upon information and belief as to the medical diagnosis and prognosis of any party.' ([Code Civ. Proc] § 36.5*; accord* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2017) ¶ 12:247.1, p. 12(I)-44 [attorney declaration under section 36.5 'can consist entirely of hearsay and conclusions'].")

Analysis

Counsel Nguyen declares that Plaintiff was born on February 11, 1939 and is 87 years old. Nguyen Decl., ¶ 3. Plaintiff suffers from acute myeloid leukemia ("AML"), an aggressive blood cancer, and, per a note from Plaintiff's doctor, the condition is terminal. Nguyen Decl., ¶ 6, Ex.

B. Nguyen also declares Plaintiff is extremely frail, that she suffers from anemia and immunosuppression as a result of the AML, and has hypertension. Nguyen Decl., ¶ 7. Plaintiff also takes a number of medications daily for her symptoms and various medical conditions. Nguyen Decl., ¶ 7. The medical records attached to the declaration state Plaintiff has "profound osteoporosis", which affected the treatment plan for the injury underlying Plaintiff's Complaint. Nguyen Decl., Ex. D. Plaintiff's terminal diagnosis, her discontinued treatment, her chronic pain, her compounding fracture injury, and her declining condition raise genuine concerns about her ability to meaningfully participate in this litigation, including her ability to provide testimony, assist counsel, attend trial, and endure the trial process. *See* Pl. Reply, 4:1-23 and citations therein.

In addition, Nguyen asserts, and the procedural history of this action shows, that all defendants have been served with process or have appeared in the action. Nguyen Decl., ¶ 2.

At bar, the information and evidence offered in the Nguyen declaration and the exhibits to that declaration are sufficient to show Plaintiff's age (87) and present medical condition. *Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 534; Code Civ. Proc. § 36(a). As the only plaintiff in the action, Plaintiff has a substantial interest in the action as a whole. Plaintiff has presented specific evidence to show she suffers from a number of medical illnesses which include AML, hypertension, and osteoporosis. Nguyen Decl., Exs. B-D. The documented medical illnesses are significant and, indeed, one is considered terminal. Nguyen Decl., Exs. B-D. Defendants present no evidence to challenge the veracity of the medical information submitted by Plaintiff or which show there exists some circumstance under which a basis exists to require more detail. *See Fox,* 21 Cal.App.5th at 535. Under these circumstances, the Court finds Plaintiff has made a sufficient showing that she has a substantial interest in the action and her health is such that a preference is necessary to prevent prejudicing her interest in the litigation. Code Civ. Proc. § 36(a)(1)-(2). The Court lacks discretion to dispense with the statutory mandates under the record presented. *Miller v. Superior Court* (1990) 221 Cal.App.3d 1200, 1208-1209.

Plaintiff's motion is granted. Trial is set for September 15, 2026, at 09:00 (the maximum 120-day trial date is September 19, 2026). *See* Code Civ. Proc. § 36(f). Pretrial conference is set for September 4, 2026, at 11:00. Mandatory settlement conference is set for August 10, 2026, at 10:00. All matters are set in Department 6.

4. CU0002532 Brian Taylor vs. Rolling Green, Inc.

Defendant Rolling Green, Inc.'s ("Rolling Green") motion to set aside or vacate entry of default is granted.

Legal Standard

Relief under Code of Civil Procedure section 473(b) is either discretionary or mandatory. A motion for mandatory relief must be made no more than six months after entry of judgment and be accompanied by an attorney's sworn affidavit attesting to the attorney's "mistake, inadvertence, surprise or neglect." Code Civ. Proc. § 473(b). The attorney affidavit of fault must contain a "straight forward admission of fault." *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610. But it need not contain an explanation of the reasons for

the attorney's mistake, inadvertence surprise or neglect. *Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 438-441. Relief must be granted "unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." *Ibid*. A motion for relief under section 473(b) "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted . . . ." Code Civ. Proc. § 473(b).

Analysis

Rolling Green moves to set aside entry of default due to attorney "mistake, inadvertence, surprise or neglect." Code Civ. Proc. § 473(b). That request has merit.

Defendant filed this motion on March 4, 2026, slightly more than one week after the February 24, 2026, entry of default. Counsel for Defendant provides an affidavit regarding the excusable neglect involved. *See* Dineros Decl. Counsel claims the default was entered as a result of his belief the parties were undergoing settlement negotiations, and the unintentional oversight of being occupied by an ongoing trial. Dineros Decl., ¶¶ 4, 8-9. Counsel explains that on January 6, 2026, he emailed Plaintiff's counsel regarding a settlement demand, and on January 21, 2026, Plaintiff served an initial demand via email. Dineros Decl., ¶¶ 4, 7; Ex. B. Counsel states he was then engaged from late January 2026 through March 2, 2026 in trial preparation and trial attendance, which reached a jury verdict on March 2, 2026. Dineros Decl., ¶ 8. Counsel avers he immediately served Defendant's Answer on March 3, 2026, at which time he learned of the default. Dineros Decl., ¶ 9. Counsel then emailed Plaintiff's counsel that failing to file the answer was an "unintentional oversight," indicating counsel "was under the impression that we were working towards a resolution," and asking Plaintiff to stipulate to set aside default. Dineros Decl., ¶ 9. Plaintiff's counsel declined to stipulate and Defendant's counsel thereafter filed the underlying motion. Pritchard Decl., ¶¶ 9-10.

Defendant has demonstrated it is entitled to mandatory relief under Code of Civil Procedure section 473(b).

If mandatory relief is granted, the court must "direct the attorney to pay reasonable compensatory legal fees and costs" to the opposing counsel or parties. Code Civ. Proc. § 473(b). Plaintiff, a self-represented party, has made no request for either fees or costs or provided proof of the same. The Court concludes that Plaintiff has forfeited his right to the same.

5. CU0001483 Susan Gabrielle vs. Phillip G. Conlon, Jr.

The Court received the joint status report filed by the parties on May 12, 2026. Appearances are required by the parties to discuss a timeline for Defendant's retention of a realtor and listing of the property, or alternatively, refinancing the property. The Court is favorably inclined to set a further review on July 20, 2026, at 09:00.