

1. AMICA MUT. INS. CO. v. PAPEZ, ET AL., 24CV0522**Motion to Set Aside Default**

Before the court is Tomas Papez's motion to set aside the default entered against him on the cross-complaint.

By way of background, a complaint in interpleader was filed by plaintiff Amica Mutual Insurance Company on March 11, 2024, naming Thomas Papez and Jeffrey Jacobs as defendants. Jacobs filed an answer to the complaint along with a cross-complaint against Papez on January 10, 2025. According to the proof of service filed June 12, 2025, the cross-complaint was personally served on Papez on May 8, 2025. Accordingly, Papez's responsive pleading to the cross-complaint was due on or before June 9, 2025, which is 30 days after personal service of the cross-complaint. (Code Civ. P.,¹ § 432.10.) Papez did not file any responsive pleading. Jacobs filed a request for entry of default on June 12, 2025, and Papez's default was entered on the cross-complaint on that same day. (§ 585(e).) To date, Jacobs has not filed a request for entry of default judgment. Papez filed his motion to set aside entry of default on October 24, 2025.

Section 473, subdivision (b), permits a court to "relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Because the law favors disposing of cases on their merits, the provisions of section 473 are liberally construed. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372.)

Papez states, in his declaration, that on June 9, 2025 – the date his response to the cross-complaint was due – he sent an email to Jacobs requesting an extension of time to June 13, 2025, to file an answer to the cross-complaint. A copy of the email is attached to the declaration as Exhibit A. The court has been presented with no evidence that Jacobs responded to the email. Jacobs filed his request for entry of default on June 12,

¹ All further statutory references are to the Code of Civil procedure unless otherwise stated.

2025, and Papez's default was entered that day. Papez's motion to strike the cross-complaint was filed on June 13, 2025, despite that he was barred from filing any motions directed at the cross-complaint from the date of entry of default on June 12, 2025. The motion to strike the cross-complaint was denied on September 8, 2025.

In his written opposition to the motion to set aside entry of default, Jacob's acknowledges receipt of the June 9, 2025, email from Papez but does not state that he replied to the email. Instead, knowing that Papez intended to file a responsive pleading on June 13, 2025, Jacob's took Papez's default the day before, on June 12, 2025.

It is "well-acknowledged that an attorney has an *ethical* obligation to warn opposing counsel that the attorney is about to take an adversary's default." (*Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 135 (emphasis in original); *Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc.* (2022) 85 Cal.App.5th 198, 203-204, 216.) Failure to do so is a professional discourtesy to opposing counsel that will not be condoned by the courts: "The quiet speed of plaintiffs' attorney in seeking a default judgment without the knowledge of defendants' counsel is not to be commended." (*Smith v. Los Angeles Bookbinders Union No. 63* (1955) 133 Cal.App.2d 486, 500 (disapproved on other grounds in *MacLeod v. Tribune Publishing Co., Inc.* (1959) 52 Cal.2d 536, 551; *Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 701.)

Moreover, the "ethical obligation to warn opposing counsel of an intent to take a default is now reinforced by a statutory policy that all parties 'cooperate in bringing the action to trial or other disposition.' " (*Lasalle v. Vogel, supra*, 36 Cal.App.5th at p. 137 (citing § 583.130).)

The court acknowledges that Papez's motion was filed four months and thirteen days after his default was entered and, while this may or may not be a reasonable time within which to file the motion, no evidence was presented as to when Papez first learned his default was taken. More importantly, any unreasonable delay is superseded by Jacobs apparently willful failure to comply with his ethical and legal obligation to

have warned Papez of his intent to take Papez's default, which the court will not tolerate no matter what previous gamesmanship may have occurred between the parties in the past.

The motion to set aside entry of default is granted.

TENTATIVE RULING: THE MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST THOMAS PAPEZ IS GRANTED. PAPEZ IS ORDERED TO FILE AND SERVE A RESPONSIVE PLEADING ON OR BEFORE DECEMBER 5, 2025. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE COURT DAY PRECEDING THE DATE THE MATTER IS SET ON THE LAW AND MOTION CALENDAR. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.