

1. SCHEIB v. TAHOE KEYS MARINA & YACHT CLUB, ET AL., SC20200065**Motion to Set Aside Default and Default Judgment**

This is a wage and hour lawsuit. Plaintiff commenced this action in May 2020. Default was entered against defendants on April 26, 2022, due to defendants' failure to answer the Second Amended Complaint. On July 19, 2022, default judgment was entered against defendants in the amount of \$603,900. Pending is defendants' motion to set aside default and default judgment pursuant to Code of Civil Procedure ("CCP") § 473(b).

CCP § 473 provides, in part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. ... Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect. ..." (*Id.*, subd. (b).)

The purpose of the attorney affidavit provision is " 'to relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.' " [Citation.] In the words of the author[,] " 'Clients who have done nothing wrong are often denied the opportunity to defend themselves, simply because of the mistake or inadvertence of their attorneys in meeting filing deadlines.' " [Citation.] [Citation.]" (*Lang v. Hochman* (2000) 77 Cal.App.4th 1225, 1248, quoting *Huens v. Tatum* (1997) 52 Cal.App.4th 259, 263.)

Defendants' former attorney, Robert Huckaby, submitted a declaration attesting to his mistakes, which mistakes resulted in default and default judgment being entered

against his clients. While the mistakes made in this case might not be excusable, under CCP § 473(b), the court must vacate entry of default and default judgment when there is a timely application for relief and the application is accompanied by an attorney's sworn affidavit attesting to his mistake, which requirements are met here. Accordingly, defendants' motion to set aside default and default judgment is granted.

The court notes that plaintiff's counsel requested that Mr. Huckaby pay them reasonable compensatory legal fees and costs. (See CCP § 473(b) ["The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties."].) However, the request is not accompanied by an attorney declaration setting forth counsel's hourly rate and the fees and costs incurred. The court is inclined to award legal fees and costs once plaintiff's counsel submits a declaration.

TENTATIVE RULING # 1: DEFENDANTS' MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT IS GRANTED. DEFENDANTS MUST ANSWER THE SECOND AMENDED COMPLAINT NO LATER THAN 10 DAYS FROM THE DATE OF SERVICE OF THE NOTICE OF ENTRY OF ORDER. 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 DAY THE TENTATIVE RULING IS ISSUED. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

2. PETITION OF J.G. WENTWORTH ORIGINATIONS, 22CV0980**Petition for Approval for Transfer of Payment Rights**

The payee has agreed to sell 28 monthly payments of \$1,000, beginning on October 11, 2022, and ending on January 11, 2025. In exchange, the payee will be paid \$20,709.46. The payee declares that she is currently experiencing financial hardship; the funds will be used to pay for living expenses, college tuition, a laptop, and art supplies for school; she is not married and has no children; she is unemployed and is currently a full-time student; she is not subject to any court orders or child support obligations; she has not completed previous transactions involving her structured settlement payments; during the past five years she has not had previous transaction attempts denied, dismissed or withdrawn prior to a decision on the merits; the structured settlement was intended as compensation for a personal injury claim; the future periodic payments were not intended to pay for future medical care and treatment related to the incident that was the subject of the settlement; and the future payments that are the subject of the proposed transfer were solely monetary in nature and not intended to provide for necessary living expenses.

Petitioner seeks an order approving the transfer of the structured settlement payments pursuant to the provisions of Insurance Code §§ 10134, et seq., on the basis that the transfer of the structured settlement payment rights is fair and reasonable and in the best interest of the payee, taking into account the welfare and support of the payee's dependents. (Ins. Code, § 10137(a).)

“No transfer of structured settlement payment rights, either directly or indirectly, shall be effective by a payee domiciled in this state, or by a payee entitled to receive payments under a structured settlement funded by an insurance contract issued by an insurer domiciled in this state or owned by an insurer or corporation domiciled in this state, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to a transferee, unless all of the provisions of this section are satisfied.” (Ins. Code, § 10136(a).)

“When determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee’s best interest, taking into account the welfare and support of the payee’s dependents, the court shall consider the totality of the circumstances, including, but not limited to, all of the following: [¶] (1) The reasonable preference and desire of the payee to complete the proposed transaction, taking into account the payee’s age, mental capacity, legal knowledge, and apparent maturity level. [¶] (2) The stated purpose of the transfer. [¶] (3) The payee’s financial and economic situation. [¶] (4) The terms of the transaction, including whether the payee is transferring monthly or lump sum payments or all or a portion of his or her future payments. [¶] (5) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to pay for the future medical care and treatment of the payee relating to injuries sustained by the payee in the incident that was the subject of the settlement and whether the payee still needs those future payments to pay for that future care and treatment. [¶] (6) Whether, when the settlement was completed, the future periodic payments that are the subject of the proposed transfer were intended to provide for the necessary living expenses of the payee and whether the payee still needs the future structured settlement payments to pay for future necessary living expenses. [¶] (7) Whether the payee is, at the time of the proposed transfer, likely to require future medical care and treatment for the injuries that the payee sustained in connection with the incident that was the subject of the settlement and whether the payee lacks other resources, including insurance, sufficient to cover those future medical expenses. [¶] (8) Whether the payee has other means of income or support, aside from the structured settlement payments that are the subject of the proposed transfer, sufficient to meet the payee’s future financial obligations for maintenance and support of the payee’s dependents, specifically including, but not limited to, the payee’s child support obligations, if any. The payee shall disclose to the transferee and the court his or her court-ordered child support or maintenance obligations for the

court's consideration. [¶] (9) Whether the financial terms of the transaction, including the discount rate applied to determine the amount to be paid to the payee, the expenses and costs of the transaction for both the payee and the transferee, the size of the transaction, the available financial alternatives to the payee to achieve the payee's stated objectives, are fair and reasonable. [¶] (10) Whether the payee completed previous transactions involving the payee's structured settlement payments and the timing and size of the previous transactions and whether the payee was satisfied with any previous transaction. [¶] (11) Whether the transferee attempted previous transactions involving the payee's structured settlement payments that were denied, or that were dismissed or withdrawn prior to a decision on the merits, within the past five years. [¶] (12) Whether, to the best of the transferee's knowledge after making inquiry with the payee, the payee has attempted structured settlement payment transfer transactions with another person or entity, other than the transferee, that were denied, or which were dismissed or withdrawn prior to a decision on the merits, within the past five years. [¶] (13) Whether the payee, or his or her family or dependents, are in or are facing a hardship situation. [¶] (14) Whether the payee received independent legal or financial advice regarding the transaction. The court may deny or defer ruling on the petition for approval of a transfer of structured settlement payment rights if the court believes that the payee does not fully understand the proposed transaction and that independent legal or financial advice regarding the transaction should be obtained by the payee. [¶] (15) Any other factors or facts that the payee, the transferee, or any other interested party calls to the attention of the reviewing court or that the court determines should be considered in reviewing the transfer." (Ins. Code, § 10139.5(b).)

Notice of the hearing and copies of the petitioning papers must be filed and served 20 days prior to the hearing, plus five days when served by regular U.S. mail or two court days when served by express mail. (Ins. Code, § 10139.5(f)(2); Code Civ. Proc., § 1013(a), (c).) The proof of service declares that petitioner served notice of the hearing,

the petition, and supporting documents on the beneficiary/payee of the structured settlement payments, the annuity issuer, and the annuity obligor by regular U.S. Mail and by overnight mail on July 25, 2022. The court finds that notice was given as required by law.

Having reviewed and considered the moving papers and supporting documents, and having considered the factors listed in Insurance Code § 10139.5(b), it appears appropriate to grant the petition, absent any objections.

TENTATIVE RULING # 2: ABSENT OBJECTION, PETITION IS GRANTED. 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 DAY THE TENTATIVE RULING IS ISSUED. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

3. REYES v. CAL. DEP'T OF TRANSPORTATION, SC20200027

Motion to be Relieved as Counsel of Record

TENTATIVE RULING # 3: MOTION TO BE RELIEVED AS COUNSEL OF RECORD FOR PLAINTIFF FERNANDO GONZALEZ IS GRANTED. WITHDRAWAL WILL BE EFFECTIVE AS OF THE DATE OF FILING PROOF OF SERVICE OF THE FORMAL, SIGNED ORDER UPON THE CLIENT. 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 DAY THE TENTATIVE RULING IS ISSUED. 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. PARTIES MAY APPEAR IN PERSON AT THE HEARING. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

4. MATTER OF BONATTO, 22CV0929

OSC Re: Name Change

TENTATIVE RULING # 4: PETITION IS GRANTED.

5. MURPHY v. SECURITAS SECURITY SERVICES, 22CV0770

**Motion to Compel Arbitration of Individual PAGA Claims and to Dismiss
Representative PAGA Claims**

On the court's own motion, matter is continued to September 30, 2022. The court apologizes for any inconvenience to the parties.

**TENTATIVE RULING # 5: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY,
SEPTEMBER 30, 2022, IN DEPARTMENT FOUR.**

6. FLETCHER, ET AL. v. FOX, 22CV0580

Motion to Compel Arbitration and for a Stay

On the court's own motion, matter is continued to September 30, 2022. The court apologizes for any inconvenience to the parties.

TENTATIVE RULING # 6: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, SEPTEMBER 30, 2022, IN DEPARTMENT FOUR.