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Department 9  
Tentative Rulings

1. NAME CHANGE OF GUNTER FRIEDRICH OTTO KOTZ 22CV1620

**TENTATIVE RULING #1: THE PETITION FOR CHANGE OF NAME IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY BY ZOOM, CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR LOGIN INFORMATION.**

**2. NAME CHANGE OF TERRI LYNN ANDERSON 22CV1598**

Petitioner filed a Petition for Change of Name on November 4, 2022. It does not appear the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure Section 1277(2)(A) and 1277(3). The hearing on this matter is continued to March 3, 2023 at 8:30 a.m. in Department 9. Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

**TENTATIVE RULING #2: THE HEARING ON THIS MATTER IS CONTINUED TO MARCH 3, 2023 AT 8:30 A.M. IN DEPARTMENT 9. PETITIONER IS ORDERED TO FILE THE OSC IN A NEWSPAPER OF GENERAL CIRCULATION IN EL DORADO COUNTY FOR FOUR CONSECUTIVE WEEKS. PROOF OF PUBLICATION IS TO BE FILED WITH THE COURT PRIOR TO THE NEXT HEARING DATE. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY BY ZOOM, CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR LOGIN INFORMATION.**

Defendant/Cross-Defendant Saladine Construction and Drywall, Inc. (hereinafter "Saladine") has agreed to pay \$20,000 in settlement of claims brought by Plaintiffs and Defendant Snipes Construction, Inc. Saladine now moves for a determination of good faith settlement under Code of Civil Procedure Section 877.6. According to the proof of service all parties were electronically served on November 28, 2022. The motion is not opposed.

Any party to an action in which it is alleged that two or more parties are joint tortfeasors is entitled to a court hearing on the issue of the good faith of a settlement between the plaintiff and one or more of the alleged tortfeasors. Cal. Civ. Pro. § 877.6(a)(1). A determination by the court that the settlement was made in good faith bars any other joint tortfeasor from bringing any further claims against the settling tortfeasor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. Cal. Civ. Pro. § 877.6(c).

In *Tech-Built v. Woodward-Clyde & Associates*, the California Supreme Court addressed the good faith requirement for settlements under Section 877.6. The policies underlying the requirement, "...require that a number of factors be taken into account including a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement, the allocation of settlement proceeds among plaintiffs, and a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial. Other relevant considerations include the financial conditions and insurance policy limits of settling defendants, as well as the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants." *Tech-Built v. Woodward-Clyde & Associates*, 38 Cal.3<sup>rd</sup> 448, 499 (1985).

However, as noted in *City of Grand Terrace v. Superior Court*, the overwhelming majority of applications for a good faith determination are unopposed and a full factual response to all of the *Tech-Built* factors would be a waste of valuable time and resources. So, when no one objects, a "barebones motion which sets forth the ground of good faith, accompanied by a declaration which sets forth a brief background of the case is sufficient." *City of Grand Terrace v. Superior Court*, 192 Cal.App.3<sup>rd</sup> 1251, 1261 (1987).

In the present case, the court has reviewed the application of Saladine and determined that it sets forth the basic statutory elements as required. As such, the motion for determination of good faith settlement is granted.

**TENTATIVE RULING #3: THE MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado**

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**County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY BY ZOOM, CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR LOGIN INFORMATION.**

**4. PEOPLE OF THE STATE OF CALIFORNIA V. DAVID BETAMEN**

**21CV0088**

Claimant Betamen filed a claim opposing forfeiture in response to a notice of administrating proceedings to determine whether or not certain funds should be forfeited to the state. The verified claim contends the claimant is the owner of all of the currency and requests that the claimed property not be ordered forfeited. The matter was set to be heard on August 26, 2022.

The People appeared at the August hearing date. At that time the court continued the hearing on the present matter pending the outcome of the related criminal case. A new hearing date was set for October 14<sup>th</sup>.

At the October hearing the court once again continued the matter due to the ongoing criminal case. Notice of the new hearing date was provided to Claimant.

**TENTATIVE RULING #4: THE PARTIES ARE ORDERED TO APPEAR IN DEPARTMENT NINE ON FRIDAY, JANUARY 6, 2023 AT 8:30 A.M. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

**5. GREGORY SCHIRO V. THYRZA DOWNER 21CV0265**

Plaintiff filed his complaint for Quiet Title and Declaratory Relief on December 7, 2021. A proof of service was filed with the court indicating Defendant was served with the complaint and other required documents on December 12, 2021. Defendant failed to timely file her answer and default was entered on January 27, 2022. Defendant now moves for entry of default judgment.

After entry of default, Plaintiff may apply to the court for the relief granted in the complaint. In such circumstances “[t]he court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff’s favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just...” Cal. Civ. Pro. § 585.

In accordance with the provisions of Section 585, Plaintiff is ordered to appear for hearing on the default judgment.

**TENTATIVE RULING #5: PLAINTIFF IS ORDERED TO APPEAR IN DEPARTMENT NINE ON FRIDAY, JANUARY 6, 2023 AT 8:30 A.M. FOR HEARING ON THE DEFAULT JUDGMENT. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.**

Georgia Wanland, Member on Behalf of Best Legal Support Team, LLC (hereinafter "Plaintiff") filed her Motion to Compel Appearance at Deposition and Production of Documents; and Request for Sanctions on December 7, 2022. The motion was served on Defendants on December 6, 2022. No opposition to the motion has been filed.

By way of her motion, Plaintiff seeks the following orders: (1) Compel Defendant Best Legal Support Team, LLC, California to appear at deposition and to produce the documents specified in the Notice of Deposition; (2) Compelling Defendant Best Legal Support Team LLC., Nevada, to appear at deposition and to produce the documents specified in the Notice of Deposition; (3) For an order that Defendants pay the sum of \$1,567.50 as the reasonable costs and attorney's fees incurred by moving party for these proceedings; (4) For sanctions in the sum of \$1,567.50, plus additional amounts if Defendants oppose the motion.

#### Deposition Attendance and Production of Documents

It is well established law that any party may obtain discovery by way of an oral deposition. Cal. Civ. Pro. § 2019.010(a) & §2025.010. "The service of a deposition notice under Section 2025.240 is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document, electronically stored information, or tangible thing for inspection and copying." Cal Civ. Pro. § 2025.280(a).

If a party deponent fails to appear at a properly noticed deposition or fails to produce for inspection any document or tangible thing described in the deposition notice, then the party giving notice may move for an order compelling the deponent's attendance and testimony. Cal. Civ. Pro. § 2025.450(a). "A motion under subdivision (a) shall comply with both of the following: ¶ (1) The motion shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice. ¶ (2) The motion shall be accompanied by a meet and confer declaration under Section 2016.040, or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance." Cal. Civ. Pro. § 2025.450(b).

Here, it appears the deposition notices were properly served in accordance with the requirements established by the Civil Discovery Act, thus, upon receipt of the deposition notices, the deponents were compelled to appear and attend their respective depositions. Regardless, neither deponent appeared. Plaintiff made the requisite meet and confer effort and attested to that in the declaration included with the motion. Further, Plaintiff has shown good cause as to the relevance of the documents requested and Defendants have neither opposed the motion nor served objections to the requested documents prior to the date of deposition. That said, the court does note the sensitive nature of non-party individuals or companies that may be included with the documents requested. For example, social security numbers, and

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bank account numbers. It does not appear that Plaintiff would require such sensitive information in furtherance of her case. As such, Defendants are ordered to appear at their properly noticed depositions and produce all documents requested in accordance with the deposition notices served November 18, 2022. Sensitive customer information may be redacted.

Sanctions

Sanctions are mandatory for one who “engages in conduct that is a misuse of the discovery process” (Cal. Civ. Pro. § 2023.030) or who “...unsuccessfully makes or opposes a motion to compel an answer or production, unless [the court] finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” Cal. Civ. Pro. § 2025.480(j); *See also* Cal. Civ. Pro. 2023.030(a). Sanctions imposed are to include “...the reasonable expenses, including attorney’s fees, incurred by anyone as a result of...” the conduct of the party subject to sanction. Cal. Civ. Pro. 2023.030(a) & 2023.020. Misuse of the discovery process includes, but is not limited to, failing to respond or submit to an authorized method of discovery. Cal. Civ. Pro. § 2023.010(d). Depositions have long been held as an authorized form of discovery. Cal. Civ. Pro. § 2025.010. A party requesting sanctions for reasonable expenses that were incurred as a result of discovery abuse must already be liable for those expenses before the court can award the costs as sanctions. *See Tucker v. Pacific Bell Mobile Servs.*, 186 Cal. App. 4<sup>th</sup> 1548 (2010) (anticipated costs for future deposition could not be included in award of sanctions).

As discussed above, Defendants failed to appear at their properly noticed depositions, thereby failing to participate in an authorized form of discovery. Defendants have not opposed the motion nor provided any justification for their actions. In these circumstances, sanctions are mandated.

According to the declaration, Plaintiff has incurred \$1,567.50 in attorney’s fees and sanctions related to the preparation and filing of this motion. Accordingly, Defendants are jointly and severally ordered to pay Plaintiff’s counsel \$1,567.50 no later than January 20, 2023. This amount may be subject to increase if Plaintiff incurs additional amounts related to the preparation and appearance at the hearing on this motion.

**TENTATIVE RULING #6: DEFENDANTS ARE ORDERED TO APPEAR AT THEIR PROPERLY NOTICED DEPOSITIONS AND PRODUCE ALL DOCUMENTS REQUESTED IN ACCORDANCE WITH THE DEPOSITION NOTICES SERVED NOVEMBER 18, 2022. SENSITIVE CUSTOMER INFORMATION MAY BE REDACTED. DEFENDANTS ARE JOINTLY AND SEVERALLY ORDERED TO PAY PLAINTIFF’S COUNSEL \$1,567.50 NO LATER THAN JANUARY 20, 2023. THIS AMOUNT MAY BE SUBJECT TO INCREASE IF PLAINTIFF INCURS ADDITIONAL AMOUNTS RELATED TO THE PREPARATION AND APPEARANCE AT THE HEARING ON THIS MOTION. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE**



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**7. STEPHEN D. HART V. FEDERAL HOME LOAN MORTGAGE CORPORATION 22CV0286**

The complaint in this matter was filed on March 2, 2022. Defendants Federal Home Loan Mortgage Corp. and Select Portfolio Servicing, Inc. (collectively “Loan Defendants”) demurred to the complaint. Plaintiff did not oppose the demurrers so the court sustained them with ten days leave to amend. Plaintiff did not amend within the allotted time period so the court, on ex parte motion of the defendants, ordered the action dismissed, with prejudice as to the Loan Defendants. Judgment was entered on October 21, 2022. Plaintiff now seeks to set aside that judgment on the basis of the court’s equitable power to set aside a judgment based on fraud or mistake.

Plaintiff maintains that his failure to defend against the demurrers was due to the misconduct of his prior attorney. The affirmative misconduct of his prior attorney, he argues, should not be imputed to him. Instead, his failure to appear and present his claim falls within the definition of extrinsic mistake which has been defined as “the excusable neglect of the defaulting party to appear and present his claim or defense.” *Cruz v. Fagor America, Inc.*, 146 Cal. App. 4<sup>th</sup> 488 (2007).

Loan Defendants filed their opposition to the motion on December 22, 2022. Loan Defendants argue that Plaintiff has not made a showing of excusable neglect and the mandatory relief provisions of Section 473(b) are inapplicable given that the judgment is the result of a demurrer, not a default. Further, Loan Defendants assert Plaintiff’s motion is untimely as Plaintiff retained new counsel on October 13<sup>th</sup> but Plaintiff has not provided any explanation as to why counsel did not appear at the October 21<sup>st</sup> dismissal hearing. Finally, according to Loan Defendants, setting aside the judgment would be futile as the proposed First Amended Complaint does not demonstrate a cognizable claim and would once again be subject to demurrer.

Loan Defendants’ reliance on their argument that the amended pleading would not survive a demurrer is misplaced. The issue before the court is not whether the amended pleading is sufficient to prevail against a demurrer, but rather whether the reason for Plaintiff’s failure to timely file the amended pleading was excusable neglect. Thus, the standard to be applied is codified in Civil Procedure Section 473(b).

Section 473(b) contains both mandatory and discretionary provisions. Loan Defendants are correct in that Plaintiff’s request does not fall within the mandatory set aside provisions of Section 473(b) as those provisions only apply to defaults and default judgments. *See Las Vegas Land & Development Co., LLC v. Wilkie Way, LLC*, 219 Cal. App. 4<sup>th</sup> 1086 (2013) (Mandatory provisions of Section 473(b) apply only to defaults). While the mandatory provisions of Section 473(b) require an attorney’s sworn affidavit, relief under any other provision of the statute does not require such an affidavit. That said, the mere fact that Plaintiff has not included an attorney’s affidavit of fault does not preclude relief from Section 473(b) altogether. In all other cases, relief is discretionary. *See Garcia v. Hejmadi*, 58 Cal. App. 4<sup>th</sup> 674 (1997). Thus, the court turns to the discretionary relief requirements of 473(b).

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“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.” Cal. Civ. Pro. § 473(b). To obtain relief under Section 473(b), the moving party must do so within a reasonable time and must provide a copy of the pleading proposed to be filed. *Id.*

Generally speaking, “...the discretionary relief provision of Section 473 only permits relief from attorney error ‘fairly imputable to the client, i.e., mistakes anyone could have made.’ [Citations]. ‘Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice.’ [Citation].” *Zamora v. Clayborn Contracting Group, Inc.*, 28 Cal. 4<sup>th</sup> 249 (2002) *citing* *Garcia v. Hejmadi*, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997). Numerous cases have found that an attorney’s conduct falling below the professional standard of care is not grounds to vacate a resulting judgment under Section 473(b). *See Carroll v. Abbott Laboratories, Inc.*, 32 Cal. 3d 892 (1982) (conduct falling below the professional standard of care is generally considered inexcusable); *See also Garcia v. Hejmadi*, 58 Cal. App. 4<sup>th</sup> 674, 682 (1997) (“[t]he Legislature did not intend to eliminate attorney malpractice claims by providing an opportunity to correct all the professional mistakes an attorney might make in the course of litigating a case”). However, “[a]n exception to this rule allows relief where the attorney’s neglect, although inexcusable, was so extreme as to constitute misconduct effectively ending the attorney-client relationship. ‘Abandonment’ may afford a basis for relief, at least where the client is relatively free of fault, but performance which is merely inadequate will not.” *Garcia, supra*, 58 Cal. App. 4<sup>th</sup> at 682-683. “For the exception to apply, the attorney’s misconduct must be sufficiently gross to effectively abrogate the attorney-client relationship, thereby leaving the client essentially unrepresented at a critical juncture in the litigation.” *Id.*

In order to determine if relief is warranted under Section 473(b), the court must decide if the conduct of Plaintiff’s prior attorney constituted total abandonment or simply ineffective representation. If Plaintiff were abandoned, then the judgment may be vacated. Whereas, if prior counsel did not abandon Plaintiff, but instead committed errors in representation amounting to more than what a reasonably prudent person under the same or similar circumstances would have made, then relief under Section 473(b) would not be proper and Plaintiff’s recourse would rest squarely with his previous attorney.

Seemingly on point here is the matter of *Buckert v. Briggs*, 15 Cal. App. 3d 296 (1971) wherein plaintiffs and their attorney failed to appear at trial and judgment was rendered against them. Counsel in that matter stated he was of the belief that the plaintiffs had abandoned their case, however, plaintiffs had not given their attorney any basis for that belief. It took the *Buckert* plaintiffs more than five months to save up the money to retain a new attorney and bring their motion under Section 473(b). The court found that under those circumstances, it was proper to vacate the judgment against plaintiffs under the discretionary

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provisions of Section 473(b) because the plaintiffs had been wholly abandoned by their attorney. Further, because the defendants could not show any prejudice resulting from the delay in bringing the motion, and there was no showing of lack of diligence on the part of plaintiffs, the timeliness of the motion, or lack thereof, was not grounds for its denial.

Similar to *Buckert*, here Plaintiff appears to have been abandoned by his prior counsel while at a critical juncture in his case. Plaintiff's Complaint was filed on March 2, 2022. Loan Defendants filed their demurrer not long after, in April of 2022. Plaintiff's counsel did not file an opposition to the demurrer, nor did he appear at the July 29<sup>th</sup> hearing date. The court continued the hearing to September 16<sup>th</sup>, and once again counsel did not appear. Plaintiff asserts that during the time between the two hearing dates he attempted to contact his attorney several times but did not receive any response. It appears from the circumstances that Plaintiff's prior attorney intended to, and did, abandon his client in the face of a dispositive motion. This abandonment is further evidenced by the difficulty current counsel had in obtaining the prior attorney's signature on the Substitution of Attorney form.

Loan Defendants point to the fact that new counsel was retained on October 13<sup>th</sup> but it was not until eight days later that the court entered its judgment of dismissal. It does not appear to the court that this is sufficient to constitute a lack of diligence as counsel was not able to obtain the signed Substitution of Attorney form until November 1<sup>st</sup>. Further, Loan Defendants point to the 5 ½ week delay in bringing the present motion. This argument is unconvincing as it falls well within the six-month statutory time period, and Loan Defendants have not shown any prejudice has befallen them as a result of the delay.

In light of Plaintiff's total abandonment by his prior attorney, and his diligence in seeking new counsel and filing the present motion, the court grants Plaintiff's Motion to Set Aside Judgment. Plaintiff is to file his Verified First Amended Complaint no later than January 20, 2023.

**TENTATIVE RULING #7: PLAINTIFF'S MOTION TO SET ASIDE JUDGMENT IS GRANTED. PLAINTIFF IS TO FILE HIS VERIFIED FIRST AMENDED COMPLAINT NO LATER THAN JANUARY 20, 2023. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY**

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**AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY BY ZOOM, CONTACT THE CLERK'S OFFICE AT 530-621-5867 FOR LOGIN INFORMATION.**

**8. MCGRATH V. MARSHALL MEDICAL CENTER ET. AL.**

**PC20200330**

On July 15, 2020, Plaintiffs filed their Complaint for Damages which they allege resulted from negligent gynecological care Plaintiff received from Marshall Medical Center (“Defendant”) on December 4, 2018. Defendant now moves for summary judgment on the basis that Plaintiffs are unable to establish any causal connection between the services rendered by Defendant and the alleged injury suffered by Plaintiff.

Defendant filed and served the following documents on October 18, 2022: Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities; Separate Statement of Undisputed Material Facts; Declaration of Kat Todd; Declaration of Kevin Elliott, M.D., and Proposed Order.

Plaintiff opposed the motion on December 27, 2022, by filing Plaintiffs’ Opposition to Defendant, Marshall Medical Center’s Motion for Summary Judgment; Points and Authorities, Declaration of Sheila McGrath in Support of Plaintiffs’ Opposition to Defendant, Marshall Medical Center’s Motion for Summary Judgment, and Separate Statement of Material Facts.

The court notes the untimeliness of Plaintiff’s opposing documents which were filed ten days prior to the date of the hearing, not the requisite 14 days. Cal. Civ. Pro. § 437c(b)(2) (“An opposition to the motion shall be served and filed not less than 14 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise.”). Plaintiff has not provided any justification for the untimeliness of her opposing papers. However, given the extreme nature of a Motion for Summary Judgment, the court finds good cause to hear this matter on its merits. That said, the court continues the matter to March 17, 2023 at 8:30 a.m. in Department 9, to allow Defendant sufficient time to review and reply to the opposing papers.

**TENTATIVE RULING #8: HEARING ON THIS MATTER IS CONTINUED TO MARCH 17, 2023 AT 8:30 A.M. IN DEPARTMENT 9. NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT’S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR REMOTELY BY ZOOM, CONTACT THE CLERK’S OFFICE AT 530-621-5867 FOR LOGIN INFORMATION.**