

Monday, September 14, 2020

TO REQUEST A HEARING ON ANY MATTER ON THIS CALENDAR, YOU MUST CALL THE COURT AT (209) 257-2692 BY 4:00 P.M. ON THE DAY PRECEDING THE HEARING. NOTICE OF THE INTENTION TO APPEAR MUST ALSO BE GIVEN TO ALL OTHER PARTIES.

IF THE CLERK IS NOT NOTIFIED OF A PARTY’S INTENTION TO APPEAR, THERE WILL BE NO HEARING AND THE TENTATIVE RULING WILL BECOME THE ORDER OF THE COURT. NO FURTHER NOTICE OF THE COURT’S RULING WILL BE PROVIDED.

05-CVC-03846 KINNE, JOHN VS.

DEFENDANT’S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

On the court’s own motion, Defendant’s Motion to Vacate or Set Aside Judgment is continued to October 26, 2020 at 8:30 a.m. in Department 2.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

17-CVC-10277 CITY OF IONE VS. GHANI, MAHMOOD

DEFENDANT’S MOTION TO VACATE OR SET ASIDE JUDGMENT

TENTATIVE RULING:

Defendant’s Request for Judicial Notice is GRANTED.

Defendant’s Motion to Vacate Clerk’s Default and Default Judgment is GRANTED.

Where a service of summons has not resulted in actual notice to a party in time to defend the action, the party may move the court to set aside default and default judgment. (CCP § 473.5(a).) The motion must be made “within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.” (Id.) The party must act with diligence upon learning of the judgment. (Trackman v. Kenney (2010) 187 Cal.App.4th 175, 180; CCP §473.5(a).)

Upon a finding by the court that the defendant’s lack of actual notice prevented him or her from defending the action, “it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.” (CCP § 473.5(d); Goya v. P.E.R.U. Enterprises (1978) 87 Cal.App.3d 886, 893.)

Plaintiff served Defendant by substitute service. The court finds Defendant’s declaration in support of the motion to vacate the default and default Judgment is adequate as Defendant declares that the lack of notice was not due to his avoidance of service or inexcusable neglect. Defendant acted diligently upon learning of the Judgment.

The court finds the Request to Vacate the Clerk’s Default and Default Judgment was made within two years after entry of default, and within a reasonable time as Defendant learned of the Judgment in late May/early June 2020.

Defendant submitted a proposed Answer but did not lodge an Answer in the court’s file. Defendant is ordered to file an Answer within ten (10) days of the date of this ruling.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-11019 JAMESON BONNER BY AND THROUGH HIS VS. WAL MART STORE 2054
GUARDIAN AD LITE

CIVIL MISCELLANEOUS MOTION

TENTATIVE RULING:

Defendant/cross-complainant's unopposed motion for leave to file a second amended cross-complaint is GRANTED.

The second amended cross-complaint is not deemed filed as moving party failed to lodge the cross-complaint with the court for filing. Defendant/cross-complainant's second amended cross-complaint must be filed on or before September 25, 2020.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.

19-CVC-11425

SCHNEIDER, CHRISTOPHER

VS.

BANK OF AMERICA NA

DEMURRER - DEFENDANT'S

TENTATIVE RULING:

On the court's own motion, Defendant's Demurrer to Plaintiff's Complaint and Motion to Strike are continued to October 26, 2020 at 8:30 a.m. in Department 2.

Unless a hearing is requested, this ruling is effective immediately. Neither further notice of the ruling nor a formal order per CRC 3.1312 is required.