

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, January 17, 2025, 9:30 a.m.
Courtroom 23 –Hon. Shelly J. Averill
3055 Cleveland Avenue, Santa Rosa**

TO JOIN “ZOOM” ONLINE:

Meeting ID: 160-825-4529

Passcode: 611386

<https://sonomacourt-org.zoomgov.com/j/1608254529>

TO JOIN “ZOOM” BY PHONE:

By Phone (same meeting ID and password as listed above):

(669) 254-5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, it will be necessary for you to contact the department’s Judicial Assistant by telephone at (707) 521-6729 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties of their intent to appear.

***ANY REQUESTS TO APPEAR FOR ORAL ARGUMENT MADE
PURSUANT TO LOCAL COURT RULE SHALL BE HEARD ON 1/17/25 AT
8:30 A.M. IN DEPARTMENT 23.**

1. 23FL00504, Sullivan Dissolution (Lead)

This matter is **CONTINUED**. Petitioner is ordered to file a Memorandum of Points and Authorities in support of her Request for Order filed on November 27, 2024, pursuant to Sonoma County Local Rule of Court 9.19.C. The Memorandum of Points and Authorities shall be filed and served by February 7, 2025. Any Reply Brief shall be filed by February 28, 2025. This matter is continued to the Law and Motion calendar of **March 7, 2025, at 9:30 in Department 23**. The parties and counsel may mutually agree to continue these dates if they are set during any period Notice of Unavailability.

2. 24FL00428, Magana/Magana Carrillo Dissolution

The court **GRANTS** the motion to set aside the default judgment entered in this matter. On April 12, 2024, Petitioner filed a request to enter default which was rejected by the Court for the reason that the proposed disposition of property did not represent an equal division of the community property assets. On April 23, 2024, Petitioner filed an amended request to enter default of Respondent which included a Marital Settlement Agreement that had been executed and notarized by both parties that same day acknowledging an unequal division of the community property. The second amended attempt to enter default was also rejected as the appropriate Declarations re: Service of Preliminary Declaration of Disclosures (PDD) and Final Declaration of Disclosures

(FDD) had not been filed. On June 10, 2024, the PDD's and FDD's were filed and indicated they were signed on April 23, 2024, the same day as the Marital Settlement Agreement. The court entered judgment on June 11, 2024. The judgment states that it is based on a marital settlement agreement ("MSA") attached to the judgment and sets the date of dissolution as September 2, 2024. It states that it also sets forth support and property division as set provided in the MSA.

Respondent filed a Request for Order and Motion to Set Aside Default Judgment. The motion was set for November 15, 2024, but continued to January 17, 2025, upon the request of Petitioner, the opposing party, who requested additional time in order to hire an attorney. No party has filed anything since that continuance and no attorney has appeared in this matter on behalf of Wife. Respondent timely filed a Request for Order ("RFO") and Motion to Set Aside Default Judgment pursuant to Code of Civil Procedure §473(b). He contends that although he failed to respond by the deadline to prevent a default, Petitioner deceived him about the effects, deceptively and coercively inducing him to enter into the MSA on which the judgment is based. He also contends that the MSA gives Petitioner more than her share of the community assets and does not represent an equal division of the assets.

No opposition has been filed.

CCP §473(b) allows parties to set aside dismissals or defaults based on mistake, inadvertence, surprise, or excusable neglect. CCP § 473(b). This motion must normally be made within a reasonable time, not to exceed 6 months from the date the order was entered. CCP §473(b). The motion in this matter was timely filed.

An order setting aside the default is discretionary where based on mistake, inadvertence, surprise, or excusable neglect. *Id.* There is also a policy in favor of hearing cases on their merits and the motion to vacate should be granted if the moving party shows a credible, excusable explanation. *Elston v. City of Turlock* (1985) 38 Cal.3d 227. The provision should be liberally construed in order to afford relief. See, e.g., *Goodson v. Bogerts, Inc.* (1967) 252 Cal.App.2d 32; *Hansen v. Hansen* (1961) 190 Cal.App.2d 327; *Reed v. Williamson* (1960) 185 Cal.App.2d 244.

The provision of this section authorizing the court to relieve a party from a judgment or order resulting from mistake, inadvertence, surprise or excusable neglect is remedial in its nature and is to be liberally construed so as to dispose of cases on their merits. *Ramsey Trucking Co. v. Mitchell* (1961) 188 Cal.App.2d Supp. 862.

"Excusable neglect" is an assessment of whether the moving party has shown a reasonable excuse for the default. *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905. The moving party must show that the default would not have been avoided through ordinary care. *Elms v. Elms* (1946) 72 Cal.App.2d 508, 513. The test ultimately is thus one of reasonable diligence. *Jackson v. Bank of America* (1983) 141 Cal.App.3d 55, 58. A showing that the defendant was unable to understand what he was served with is sufficient to justify relief. *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208.

Family Code section 2122 sets forth the various bases for relief pursuant to that provision. As to stipulated or uncontested judgments, or any part thereof, a motion under Fam. Code section 2122 may be based on mutual or unilateral mistake of law or fact. Fam.Code section 2122(e). Under this provision, "mistake" is broader than the "extrinsic mistake" standard applying to the court's

inherent power to set aside. See *Marriage of Brewer & Federici* (2001) 93 Cal.App. 4th 1334, 1345, fn. 10; *Marriage of Varner* (1997) 55 Cal.App. 4th 128, 144. Authority indicates that a party may seek relief on various grounds not otherwise recognized by the statute as long as they can be found to fall within the scope of “mistake” as broadly applied. See *Marriage of Walker* (2012) 203 Cal.App. 4th 137, 147, (upholding validity of § 2122(e) motion to vacate community property ruling based solely on erroneous legal conclusion). No wrongdoing is necessary for relief based on mistake. *Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334, 1347, (wife honestly stated value of one of her pensions was “unknown” but valuation information was readily available to her).

In this action, Wife initially attempted to submit a Default Judgment on April 12, 2024, which was rejected as it did not represent an equal division of the property. On April 23, 2024, Wife re-submitted a Request for Entry of Default Judgment which included a Marital Settlement Agreement that had been signed that same day by Husband agreeing to a substantially unequal division of the community property.

Husband, who was not represented by counsel, now contends that Wife advised him that it was too late for him to respond because he had not done so timely and that the assets were going to be divided as set forth in the Marital Settlement Agreement. Husband’s declaration sets forth both a mistake of law and fact as to the reason he signed the marital settlement agreement provided by Wife and permitted the matter to proceed by default. Husband has submitted a proposed Response with his pleadings which he shall cause to be filed. The prevailing party shall prepare an Order consistent with this tentative ruling.

3&4. 24FL00907 & 24FL00824, Bonin Dissolution

The Motion for Sheri N. W. Chlebowski to Be Relieved as Counsel for Respondent LaShante Bonin is **GRANTED** pursuant to CCP §284(2). The proposed order submitted by Ms. Chlebowski shall be entered.

5-6. 24FL01714, Doyle Dissolution

These matters have been dropped from calendar.

7. SFL076694, Allen, II/Allen Dissolution

The Request for Bifurcation and Entry of Judgment of Dissolution of Marriage-Status Only is **GRANTED**. The initial Petition for Dissolution was filed by Petitioner/Husband (Husband) in this matter on April 27, 2017, and after an unsuccessful attempt at reconciliation was re-initiated on July 7, 2020. Respondent/Wife (Wife) filed a Response on November 4, 2020. Both parties confirm in their respective pleadings and requests for dissolution that there are irreconcilable differences, and that jurisdiction of this action was proper in the County of Sonoma. On February 9, 2024, the parties fully executed a Marital Settlement Agreement resolving all pending issues as to the division

of the community estate and providing for the support of Wife. Both parties were represented by independent counsel at the time of the entry of this contractual agreement. The Attorney Certification for Wife specifically provides that "...the undersigned has specifically advised her that by execution of the foregoing Marital Settlement Agreement, she is making a final and binding agreement with respect to the community property of the marriage and the separate property of both parties..." and "That Laura L. Allen, after being fully advised by the undersigned, acknowledged to the undersigned that she understood the legal effect of the foregoing Agreement and executed the same freely and voluntarily." Pursuant to Family Code Section 2337(a) the Court has the authority to grant and sever the issue of the status of the marriage and finds that it is appropriate to do so on these facts. The Court further finds compliance with Family Code Section 2337(b). As the parties have fully executed a contractual Marital Settlement Agreement as to the disposition of their property and all rights and responsibilities between them as to the community and separate property assets, the Court does not order any terms pursuant to Family Code Section 2337(c) as Wife's community interest in the assets is adequately protected. Husband is ordered to submit his proposed order attached as Exhibit C to his moving papers in a form consistent with the orders contained herein.

8. SFL092504, Jenkins Dissolution

The Motion of Daniel Beck to Be Relieved as Minor's Counsel is **GRANTED** pursuant to CCP §284(2). The proposed order submitted by Mr. Beck shall be entered. Mr. Beck shall write a summary concluding report to the Court within 10 days of this order and shall provide any future Minor's Counsel, if appointed, with any appropriate materials requested for a smooth transition between counsel.