

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, April 4, 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.

1. SFL56912, Confidential Case

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

2. SFL090729, Leon Dissolution

Respondent’s motion to set aside the default in this matter is **GRANTED**. Petitioner filed a Petition for Dissolution of Marriage on April 6, 2022, alleging a date of separation of February 19, 2022. Respondent was personally served with the Summons and Petition and executed a Notice and Acknowledgment of Receipt on May 6, 2022. No further action was taken on the case until Petitioner filed a Request to Enter Default on February 16, 2024, setting forth that the Respondent was served at the community property residence address. The Request to Enter Default was granted on February 16, 2024. However, the Default Judgment was rejected for various procedural reasons and has not been entered.

Respondent filed a Request for Order and Motion to Set Aside Default and sanctions on February 20, 2025. The Petitioner was electronically served with the motion on February 20, 2025. No opposition was filed.

In his Request for Order (“RFO”) and Motion to Set Aside Default Respondent moved to set aside the default pursuant to Code of Civil Procedure §473(b) and Family Code §2122. He contends that although he failed to respond by the deadline to prevent a default, Petitioner deceived him about the effects, deceptively as the parties continued to reside together after the filing of the Petition and

shared a marital relationship for an additional two years beyond the filing of the initial Petition for Dissolution. Respondent further alleges that although Petitioner contends the Request to Enter Default was mailed to him at their ongoing joint marital residence, he did not actually receive and did not have actual notice that Petitioner was moving the request a default be taken against him.

There is no opposition.

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 not filed within the 6-month statutory time as Respondent contends that the parties did not separate until October, 2024 and continued to live their lives as a married couple between the time the Petition was filed in 2022 and the time the Request for Default was made on February 16, 2024, a full two years after the Petition was filed. The Court may consider equitable relief as “apart from any statute, courts have the inherent authority to vacate a default and default judgment on equitable grounds such as extrinsic fraud or extrinsic mistake.” (*Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97.)

“Extrinsic fraud usually arises when a party is denied a fair adversary hearing because he has been ‘deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.’ ” (*Ibid.*, citing case.) Extrinsic fraud is a broad concept that “tend[s] to encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing.” (*Marriage of Park* (1980) 27 Cal. 3d 337, 342.) In the instant case, it appears that Petitioner was continuing to discuss possible settlement options with Respondent even months after she had already sought and obtained his default without notifying him of such. This is especially concerning given that Petitioner in this action is an attorney and has a greater knowledge regarding the legal process than Respondent.

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” comes down to 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. Another valid basis is if the defendant mislaid or misfiled the papers and as a result failed to obtain an attorney in time. *Bernards v. Grey* (1950) 97 Cal.App.2d 679, 683-686. Simply

forgetting about the lawsuit or being too “busy” is not adequate. *Andrews v. Jacoby* (1919) 39 Cal.App. 382, 383-384. Excusable neglect by attorneys includes situations where, despite reasonable supervision, an attorney’s secretary misfiled papers or failed to enter an appearance date. *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 234; *Alderman v. Jacobs* (1954) 128 Cal.App.2d 273.

Fam. 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 proceedings to set aside pursuant to Fam.Code section 2121, the court also “shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.” Fam.Code section 2121(b); see also *Marriage of Walker* (2012) 203 Cal.App. 4th 137, 146; *Marriage of Brewer & Federici* (2001) 93 CA4th 1334, 1345; *Marriage of Varner* (1997) 55 Cal.App.4th 128, 137.

In other words, the moving party bears the burden of demonstrating both the presence of at least one of the statutory grounds for relief and that the circumstances resulted in a material disadvantage to the moving party. *Marriage of Kieturakis* (2006) 138 Cal.App. 4th 56, 89; *Marriage of Rosevear* (1998) 65 Cal.App. 4th 673, 685.

The fraud-based ground as set forth in section 2122 includes actual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding. This is broadly similar to the standard of extrinsic fraud or mistake as applied in the court’s extrinsic power to set aside in civil matters. Accordingly, fraudulently inducing the other party not to retain counsel or not to appear in the action will be a basis for relief. See *Marriage of Stevenot* (1984) 154 Cal.App. 3d 1051, 1060-1067; see also *Kuehn v. Kuehn* (2000) 85 Cal.App. 4th 824, 833. As the court stated in *Steven W. v. Matthew S.* (1995) 33 Cal.App.4th 1108, at 1114, “the strongest examples of extrinsic fraud occur when the aggrieved party is induced not to appear, relying on representations, in the context of a confidential relationship, that his interest will be protected.”

In the instant case, Petitioner’s attempt to file a Default Judgment based upon the property declaration that Respondent claims incorrectly assert a community property interest in his separate property asset and substantially overvaluing the asset to create the appearance of an equal division of property falls squarely within the parameter of relief contemplated by Family Code §2122. Entering the Default Judgment would materially impact Respondent’s property rights and Respondent would materially benefit from granting the requested relief.

For these and all of the foregoing reasons, the Respondent's requests to vacate the Default and permit him to file his Response so that the proceeding may continue on the merits is **GRANTED**. The Court reserves jurisdiction on Respondent's request for attorney's fees as sanctions per Family Code §271.

3. SFL092922, Hals Dissolution

The Request for Bifurcation and Entry of Judgment of Dissolution of Marriage-Status Only is **GRANTED**. The Petition for Dissolution was filed by Petitioner on February 2, 2023, and Petitioner met all of the jurisdictional requirements upon filing of the Petition. Respondent was personally served with the Summons and Petition on February 14, 2023, and the Proof of Service of Summons was filed on February 16, 2023. Respondent has not filed a Response and has not completed his Preliminary Declarations of Disclosure. Petitioner filed her Declaration Re: Service of Declaration of Disclosure (Preliminary) on February 16, 2023. Petitioner requests a bifurcation of marital status with reservation of jurisdiction granted as to all property issues and support issues. The Court grants the request for bifurcation of marital status and entry of Judgment as to Marital Status Only effective April 4, 2025, subject to all of the protections of Family Code §2337(c). Petitioner shall prepare and submit the Judgment-Status Only within 10 days of the entry of this order.