

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Friday, May 16, 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.

**1. 24FL00304, Brinkerhoff Dissolution**

**Motion to Set Aside Judgment GRANTED** subject to the temporary orders set forth herein.

Petitioner filed this action for dissolution of marriage with two minor children (the “Children”) on February 14, 2024. Petitioner sought joint legal and physical custody as well as visitation rights.

The parties entered into a stipulation and waiver of final declaration of disclosure which Petitioner filed on April 18, 2024, the same day on which both parties filed a declaration (the “PDD Declaration”) regarding service of preliminary declaration of disclosure (“PDD”). Petitioner then filed a request to enter default on April 23, 2024, based on the fact that the parties had reached a written marital settlement agreement (the “MSA”) resolving the issues in the litigation. On May 16, 2024, the court entered judgment (the “Judgment”) based on, and incorporating, the MSA. Up through the time of the entry of Judgment, both parties were self-represented. Both parties have since then obtained counsel who have substituted into this action.

In her Request for Order (“RFO”) and Motion to Set Aside Judgment, Petitioner moves the court to set aside the Judgment. She asserts that the parties did not exchange preliminary declarations of disclosure (“PDD”) and the declaration of disclosure which each party signed is false. She explains that in their settlement negotiations which resulted in the MSA, attorney Gina Lee (“Lee”) assisted them both and provided them with various documents, but after Respondent commenced contempt proceedings regarding support payments, she discovered evidence indicating that the parties had not in fact exchanged PDDs and that Lee failed to complete all of the relevant paperwork. The result, she asserts, is that the parties never exchanged PDDs, and she never

understood the parties' assets, debts, or income, and accordingly is unable to determine the propriety of the support payments she is supposed to make.

Respondent in her response to the motion does not oppose the motion but in fact also asks the court to set aside the judgment on the same basis, along with an additional request that the court also make temporary orders pending a new judgment. She also asserts that Lee never prepared the PDDs, and the parties never exchanged them.

Both parties agree that their PDD's were never completed and exchanged.

According to the Family Law Rules of the California Rules of Court ("CRC") 5.2(d), and Family Code ("Fam. Code") section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure ("CCP"). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022 (discovery); *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (discussing the applicability of CCP section 473 when a party seeks relief from orders in family proceedings).

Each party in an action of nullity or dissolution of marriage or for legal separation, must serve on the other a preliminary declaration of disclosure executed under penalty of perjury. Fam. Code section 2104(a). Section 2104(a) states that "[e]xcept by court order for good cause as provided in Section 2107, or when service of the preliminary declaration of disclosure is not required pursuant to Section 2110," the preliminary declaration of disclosure must be served within the time set forth in subdivision (f), i.e., either concurrently with the petition or response or within 60 days of filing the petition or response. The preliminary declaration of disclosure must set forth, "with sufficient particularity," the party's possible assets and debts, percentage interest or liability regarding the assets and debts, and the party's characterization of the assets and debts. Fam. Code section 2104(c).

Fam. Code section 2110 governs declarations of disclosure in the context of default judgments. It states, in full:

In the case of a default judgment, the petitioner may waive the final declaration of disclosure requirements provided in this chapter and shall not be required to serve a final declaration of disclosure on the respondent nor receive a final declaration of disclosure from the respondent. However, a preliminary declaration of disclosure by the petitioner is required unless the petitioner served the summons and petition by publication or posting pursuant to court order and the respondent has defaulted.

Fam. Code section 2105 adds that the parties may, when entering into an agreement to resolve property or support issues, stipulate to a mutual waiver of the final declaration of disclosure but that they must still exchange the mandatory PDDs and submit a declaration stating that they have done so.

Relief from support orders, due to default or otherwise, in family-law cases may be based on the grounds generally applicable to motions to vacate under CCP section 473, or, after that deadline, only in accordance with the grounds in Fam. Code sections 2121, 2122, and 3691. *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911; see also CRC 5.2(d) (provisions

applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided).

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. CCP section 128 also gives the court the power to control the proceedings before it, preserve and enforce order, compel obedience to judgments, orders, and make orders and process “conform to law and justice.”

In this instance, both parties agree on the fundamental relief, vacating the judgment, as well as the bases for doing so. Their explanation also presents a basis for vacating the judgment under the applicable provisions of Fam. Code sections 2021 and 2022, showing mutual mistake of fact and law. The lack of financial information also may have materially affected the parties’ understanding of their relative finances, resulting in potentially incorrect or unfair stipulations which are at the root of the current conflicts. It is impossible to make a proper stipulation or determination accurately reflecting the parties’ assets and debts without the missing information.

The only issue of apparent disagreement between the parties is that Respondent asks the court to make temporary orders regarding custody and the family residence at 3468 San Somita Drive, Santa Rosa (the “Property”), both of which essentially keep in place the current terms of the Judgment on those points. She explains that the parties both have agreed to joint physical and legal custody and that they both agreed that the Property would be confirmed to Respondent, who would take over all the financial responsibility for the Property, and that she has in fact done so. Respondent’s requested temporary orders are appropriate. They are reasonable and they are in accordance with the parties’ agreements as well as their current conduct, including Respondent’s handling of the mortgage for the Property. Moreover, the parties’ current dispute seems to be focused on the issue of support, not custody or the Property. The court grants the request for these temporary orders, which will be in place only pending litigation and pending new stipulations or orders resolving each respective issue.

The court GRANTS the motion subject to the temporary orders set forth above. The moving party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

## **2. 24FL00909, Sisco Dissolution**

The Motion to Compel Respondent to complete and serve his Preliminary Declaration of Disclosures to include a Schedule of Assets and Debts and Income and Expense Declaration, Family Law Form Interrogatories and a Request for Production of Documents is **GRANTED**.

Respondent filed his Response to the Petition in this matter on June 10, 2024. Pursuant to Family Code §2104(f), the “respondent shall serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition, or within 60 days of filing the response.” Petitioner served Respondent a Notice of Demand for Service of Preliminary Declaration of Disclosure on July 15, 2024, after he failed to comply with the timelines set forth in Family Code §2104(f). On July 15, 2024, Petitioner also served Family Law Form Interrogatories and a Request for Production of Documents. Responses were due for all of these requests no later than August 29, 2024. A party who has been served with discovery demands pursuant to CCP §2030.260 (interrogatories) or CCP §2031.260 (inspection demands) has 30 days to serve written responses including objections. Respondent in this action failed to provide responses or objections to either the form interrogatories or the inspection demands. After Respondent failed to comply with any of the demands, Petitioner’s counsel sent Respondent an e-mail on October 18, 2024, reminding him that he was required to complete the documents and respond. Petitioner’s counsel communicated with Respondent on multiple occasions between October 18, 2024, and January 9, 2025, attempting to gain his compliance. On January 9, 2025, Respondent appeared at a hearing and the Court ordered him to comply with the discovery requests and directed him to the Family Law Facilitator’s Office if he required assistance. Respondent indicated he would comply. As of this date, Respondent still has not complied with the mandatory disclosures, responses or objections to the pending discovery requests. Pursuant to Family Code §2107(c) the Court is required to order sanctions when a party fails to comply with the mandatory disclosure requirements necessitating the filing of a motion to compel. Failure to respond to written discovery is also grounds for sanctions under CCP §2023.010(d); CCP§2023.030(a); CCP §2030.290(c) and CCP §20310.300(c).

Additionally, the Court may consider attorney’s fees as sanctions pursuant to Family Code section 271, where the conduct of a party frustrates settlement. In this matter Petitioner repeatedly attempted to gain voluntarily compliance with the mandatory disclosure requirements in order to avoid bringing the pending motion.

Accordingly, the Court orders Respondent to pay the sum of \$3,500 as sanctions pursuant to Family Code §2107(c), CCP §2023.010(d); CCP§2023.030(a); CCP §2030.290(c) and CCP §20310.300(c), and attorney’s fees as sanctions pursuant to Family Code §271. This sum is due and payable to the Petitioner through her counsel John Vonder Haar within 10 days of entry of this order. Furthermore, Respondent is ordered to complete the mandatory Preliminary Declaration or Disclosure to include the Schedule of Assets and Debts and Income and Expense Declaration and

respond to the Family Law Form Interrogatories and Demand for Production of Documents within 15 days of entry of the order in this matter. Mr. Vonder Haar shall prepare and submit the Order adopting this tentative ruling in the event neither party requests oral argument as required by local court rule.

### **3. SFL093502, Ruiz/Lopez Dissolution**

#### **APPEARANCES REQUIRED.**

Petitioner filed this action for dissolution of marriage without minor children on April 28, 2023. Respondent filed his response on June 21, 2023. The parties entered into a written stipulated judgment (the “Judgment”) which was filed on July 15, 2024. The Judgment states that Petitioner receives two automobiles and ½ of a joint account at Redwood Credit Union, Respondent receives real property in Guanajuato, Mexico (the “Mexico Property”) and ½ of a joint account at Redwood Credit Union. It also states that Respondent is to give Petitioner \$30,000 of the \$100,000 cash savings, with \$15,000 payable “upon signing judgment and the second half once the judgment has been entered by the court.”

In her Request for Order (“RFO”) and Motion to Set Aside Stipulation Judgment, Petitioner moves the court to set aside the Judgment based on Code of Civil Procedure section 473(b) and Family Code section 2122(e). She contends that Respondent has acted in bad faith, until recently she did not realize that the Judgment contained certain unspecified language which she contends is incorrect, and she claims that Respondent refuses to pay her more than \$25,500 even though the Judgment requires him to pay her \$30,000.

Respondent opposes the motion. He asserts that he has not acted in bad faith and has simply not yet been able to pay the outstanding \$4,500 which he acknowledges he owes to Petitioner under the Judgment. He contends that he needs more time to pay the money, he has a heart condition which requires him to make frequent trips to Mexico for treatment, and he is not working but instead receives support from his family. With respect to the alleged error in the Judgment, he contends that he did not intentionally make that error, which he asserts is the portion of the Judgment allocating him the Mexico Property, but that it was a mistake which he did not notice because he did not review the Judgment when signing on it and simply relied on a Spanish explanation. He admits that they agreed that Petitioner is to receive the Guanajuato Property and asks the court merely to modify the Judgment to reflect that. He provides a declaration from a paralegal and legal document preparer, Antonia E. Garza (“Garza”) who confirms his position. According to the Family Law Rules of the California Rules of Court (“CRC”) 5.2(d), and Family Code (“Fam. Code”) section 210, provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided. This includes the rules applicable to civil actions in the California Rules of Court and the Code of Civil Procedure (“CCP”). See, e.g., *In re Marriage of Boblitt* (2014) 223 Cal.App. 4th 1004, at 1022 (discovery); *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911 (discussing the applicability of CCP section 473 when a party seeks relief from orders in family proceedings).

Relief from judgments, due to default or otherwise, in family-law cases may be based on the grounds generally applicable to motions to vacate under CCP section 473, or, after that deadline, only in accordance with the grounds in Fam. Code sections 2121, 2122, and 3691. *In re Marriage of Zimmerman* (2 Dist. 2010) 183 Cal.App.4th 900, at 910-911; see also CRC 5.2(d) (provisions applicable to civil actions generally apply to proceedings under the Family Code unless otherwise provided). According to CCP section 473(d), the court may also correct clerical mistakes or set aside any void judgment or order.

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. CCP section 128 also gives the court the power to control the proceedings before it, preserve and enforce order, compel obedience to judgments, orders, and make orders and process “conform to law and justice.” This gives the court the power to correct clerical errors, as distinct from judicial errors. *Bloniarz v. Roloson* (1969) 70 Cal.2d 143; *Boylan v. Marine* (App. 2 Dist. 1951) 104 Cal.App.2d 321.

In this instance, both parties agree that the Judgment contains one critical, yet simple, error awarding the Mexico Property to Respondent when it is supposed to state that the Mexico Property is awarded to Petitioner. There is no dispute about this issue. Petitioner wants the Judgment vacated or changed to award the Mexico Property to her and Respondent agrees, asking the court to modify the Judgment. Otherwise, there is no dispute or defect regarding the Judgment. Petitioner merely claims that Respondent has not paid the full amount he owes her under the Judgment, and he agrees but states that he needs more time to pay the remaining amount.

At this time, the court **REQUIRES APPEARANCES** to address the details of changing the Judgment and issues of payment. However, the court anticipates that the appropriate outcome regarding this motion is to order a modification of the judgment, with a stipulation by the parties, awarding the Mexico Property to Petitioner but otherwise leaving the Judgment in place and making no further alterations.