TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 12, 2025 9:30 a.m.
Courtroom 22 –Hon. Paul James Lozada
3055 Cleveland Avenue, Santa Rosa CA 95403

TO JOIN "ZOOM" ONLINE:
Meeting ID: 161-312-0396
Passcode: 219644
https://sonomacourt-org.zoomgov.com/j/1613120396

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By Phone (same meeting ID and password as listed above):
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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 - 6836 by 4:00 p.m. on the day before the hearing. Any party requesting an appearance must notify all other opposing parties/counsel of their intent to appear.

1. **23FL00373 Almgren/Gonzales Dissolution**

Motion to Compel Discovery and Sanctions GRANTED. Sanctions of $2,091, awarded to the moving party against the Petitioner.

Facts

Petitioner filed this action for dissolution of marriage without minor children on October 20, 2023. Respondent filed her response on December 4, 2023.

Discovery

On April 29, 2025, Respondent served Petitioner with set one of form interrogatories and set one of requests for production (collectively, the "Discovery"), along with a letter discussing tax issues and the bifurcated judgment. Declaration of Nicole Grae Smith ("Smith Dec."), ¶3. Although discovery responses were due by June 3, 2025, Petitioner served no responses and has not contacted Respondent to seek an extension. Id., ¶4.

Motion

In her Request for Order ("RFO") and Motion to Compel Discovery and Sanctions, Respondent moves the court to compel Petitioner to provide responses to the Discovery. She also seeks monetary sanctions.

There is no opposition.

Applicable Authority

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"), and specifically proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. 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 Code of Civil Procedure section 473).

Where a party seeks to compel responses to interrogatories under CCP section 2030.290 or to requests for inspection or production under CCP section 2031.300, the moving party need only demonstrate that the discovery was served, the time to respond has expired, and the responding party failed to provide a response. See *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 411. Failure to provide a timely response waives all objections. CCP section 2030.290. There is no meet-and-confer requirement or a deadline for a motion to compel response where none has been made. CCP sections 2030.290, 2031.300.

The responding party must verify substantive responses. CCP sections 2030.250, 2031.250. Where a response is unverified, the response is ineffective and is the equivalent of no response at all. See *Appleton v Sup.Ct.* (1988) 206 Cal.App.3d 632, 636.

Discussion

Respondent's motion is persuasive. As set forth in the facts above, she demonstrates that she served the Discovery, the deadline has passed, and Petitioner has served no responses.

The court does note that Petitioner, through her new attorney, filed a proof of service on August 21, 2025, after Respondent filed this motion, stating that she had served responses to the interrogatories on that date. However, this is insufficient and unclear. Even assuming the proof of service to show that she served the requested interrogatory responses, this shows that the responses were untimely, it does not show what the responses were or whether they contained waived objections or were verified, and it fails to address the requests for production. At this time, the court finds this proof of service to have no impact on this motion.

The court GRANTS the motion.

Sanctions

Fam. Code section 271 broadly authorizes the court to make an award of attorney's fees and costs "in the nature of a sanction," and "[n]otwithstanding any other provision of this code," based on "the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." The party requesting an award of attorney's fees and costs on this basis is not required to demonstrate any financial need for the award.

For compelling responses to production requests, the court shall impose monetary sanctions on the losing party unless that party acted with substantial justification, or other circumstances make sanctions unjust. CCP sections 2023.010, 2023.030, 2030.290. A party may seek relief from sanctions due to mistake, inadvertence, or excusable neglect if it has served responses. CCP section 2030.290.

In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. The sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

Respondent seeks monetary sanctions of $3,952.17 in attorney's fees at $400 an hour and paralegal fees at $150 an hour, plus $60 in costs for filing the motion and anticipated expenses including reply and hearing. Smith Dec. ¶¶13-16. The amount sought is high for a simple motion to compel but the court notes that it does include time spent on an effort to meet and confer which, although not necessary here, is reasonable. The billing records demonstrate time spent which on the face appears to be reasonable and related to this motion but include far more time and expense spent on such a motion that the court finds to be typical or reasonable. The court also cannot award sanctions covering expenses which are only anticipated until, and unless, they are actually and reasonably incurred.

The court finds five hours of attorney time and the requested paralegal fees of $31.00, although still high, to be reasonable. The court awards to Respondent and against Petitioner this amount, $2,031 in fees, plus the $60 filing fee, for a total of $2,091. The court may award more according to proof and demonstration of a sufficient basis.

Conclusion

The court GRANTS the motion as set forth above. The prevailing 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.

It is SO ORDERED.

2. **24FL02577 Abercrombie vs Haber**

Motion to Find Respondent as Vexatious Litigant and Sanctions Under 128.5 DENIED. Both parties' requests for sanctions are DENIED.

Facts

Petitioner commenced this matter regarding domestic violence without minor children when she filed a Request for Domestic Violence Restraining Order ("DVRO") against Respondent on December 20, 2024. Respondent, with attorney James Carroll ("Carroll") representing her, filed a response on January 10, 2025.

The court denied the request for temporary DVRO and subsequently held an evidentiary hearing on the request on June 12, 2025, at which both parties and their respective attorneys were present, presented evidence, conducted witness examination, and presented arguments. The respective attorneys for both parties acted on behalf of their clients throughout the hearing. Following the hearing, the court granted the request and issued a three-year DVRO protecting Petitioner and restraining Respondent.

Respondent, acting on her own as a self-represented litigant, filed an appeal on June 16, 2025. Attorney Caroll filed a substitution of attorney on June 20, 2025, showing that Respondent and he had agreed to him withdrawing from the representation, leaving Respondent self-represented. The form shows that Carroll and Respondent had signed it on June 19, 2025. The court of appeal issued a notice of default on the appeal on July 17, 2025.

Again, acting as a self-represented litigant, Respondent also filed two ex parte applications challenging the DVRO, one on June 30, 2025 and the second on July 10, 2025. This court denied the ex parte applications to terminate the DVRO. In the first, the court denied the request on the ground that Respondent failed to state a sufficient basis for relief and that the basis of the request, essentially a claim that her prior attorney, Carroll, had failed to handle the proceedings properly, was better suited for the appeal which was at that time still pending. In the order denying the second request, the court set the matter for a hearing on Respondent's motion to reconsider the DVRO. Respondent filed the relevant motion on July 11, 2025. The court in its order setting the hearing expressly explained that Respondent, the moving party, "must file a memorandum of points

and authorities upon which she relies" to give notice to the court and other party "of the nature and substance of the present request."

On August 21, 2025, attorney Stephanie Ransom ("Ransom") filed a notice of limited scope representation on behalf of Respondent. The following day, Ransom filed a substitution of attorney on behalf of Respondent by which she substituted into this action as Respondent's attorney.

At the hearing of August 22, 2025 on Respondent's motion for reconsideration of the DVRO, both parties appeared with their attorneys. The court denied Respondent's motion, adopting the tentative ruling which noted that Respondent failed to present a timely memorandum of points and authorities or explanation of the legal grounds for relief and that the motion was in any case unpersuasive because Respondent presented no facts supporting either reconsideration under Code of Civil Procedure ("CCP") section 1008 or relief pursuant to CCP section 473.

Motion

In her Request for Order ("RFO") and Motion to Find Respondent as Vexatious Litigant and Sanctions Under 128.5, Petitioner moves the court to declare Respondent to be a vexatious litigant pursuant to CCP section 391(b)(5), subject to a prefiling order, and to impose monetary sanctions pursuant to CCP section 128.5. Petitioner asserts that Respondent has repeatedly attempted to relitigate the validity of the DVRO determination with unmeritorious papers and inadmissible exhibits.

Respondent opposes this motion. She contends that her motions and ex parte applications were not meritless, she simply availed herself of proper statutory procedures to challenge orders, and the motion was premature because filed before court rulings on two of the matters referenced in the motion. She requests monetary sanctions pursuant to CCP section 128,5 on the basis that this motion is itself frivolous and devoid of merit.

Applicable Authority

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 Code of Civil Procedure section 473 when a party seeks relief from orders in family proceedings).

Pursuant to CCP section 391, et seq., a court may declare a party meeting certain criteria to be a "vexatious litigant" and accordingly impose certain specified restraints on that party's ability to litigate when self-represented.

CCP section 391.7 authorizes a court to find a party to be a vexatious litigant and enter a prefiling order upon either the motion of a party or the court's own motion. Subdivision (a) states, in full,

> (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

CCP section 391 sets forth the applicable definitions for the title governing vexatious litigants, including the different definitions of "vexatious litigant." Subdivision (a) states that ' "Litigation" means any civil action or proceeding, commenced, maintained or pending in any state or federal court.' Subdivision (b) sets forth the different circumstances under which one qualifies as a "vexatious litigant." It states, in pertinent part and with emphasis added,

> (b) "Vexatious litigant" means a person who does *any* of the following:
>
> (1) In the immediately preceding seven-year period has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.
>
> …

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

…

(5) After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1 (commencing with Section 6300) of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.

A self-represented litigant who repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in frivolous tactics to cause unnecessary delay may be determined as a vexatious litigant. CCP section 391(b)(3). With respect to "repeatedly" filing unmeritorious motions, the statute does not define "repeatedly," and the determination as to what constitutes "repeatedly" and "unmeritorious" is generally left to the sound discretion of the trial court. *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 971; *Holcomb v. U.S. Bank Nat. Ass'n.* (2005) 129 Cal.App.4th 1494, 1505–1506. As few as three motions can "form the basis for a vexatious litigant designation where perhaps they all seek the exact same relief which has already been denied or all relate to the same judgment or order or are filed in close succession." *Morton v. Wagner* (2007) 156 Cal.App.4th 963, 972. The 'repeated motions must be so devoid of merit and be so frivolous that they can be described as a " 'flagrant abuse of the system,' " have "no reasonable probability of success," lack "reasonable or probable cause or excuse" and [be] clearly meant to " 'abuse the processes of the courts and to harass the adverse party.' " [Citation.]' Ibid. Repeated unmeritorious filings in a child custody matter can support a vexatious litigant finding. *In re Marriage of Rifkin & Carty* (2015) 234 Cal.App.4th 1339, 1344-1345.

A party may seek, among other things, a pre-filing order requiring the vexatious litigant to obtain leave from the presiding judge before filing any new case in any California court, or from filing "any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order" without such leave. CCP section 391.7(a). Thus, in

finding a party in a family law proceeding to be a vexatious litigant, a court may impose a pre-filing order requiring permission of the presiding judge before filing any new motion or litigation on the family law proceeding. See *In re Marriage of Deal* (2020) 45 Cal.App.5th 613; *In re Marriage of Deal* (2022) 80 Cal.App.5th 71, 76-77; see also *In re Marriage of Rifkin & Carty* (2015) 234 Cal.App. 4th 1339, 1345-1346. The presiding judge may condition the filing of such a pleading "upon the furnishing of security for the benefit of the defendants as provided in Section 391.3." CCP section 391.7(b). CCP section 391.7(d) states, 'For purposes of this section, "litigation" includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.'

A party in a family law proceeding may be declared a vexatious litigant even if only the respondent. *In re Marriage of Deal* (2020) 45 Cal.App.5th 613, 620-621; see also *In re Marriage of Deal* (2022) 80 Cal.App.5th 71.

Analysis

Respondent's motion is not persuasive. In this instance, the court finds that Respondent has only made three filings challenging the DVRO: the appeal and two ex parte applications. The last of the latter two applications ultimately resulted in a hearing on noticed motion pursuant to this court's order, with the result that that motion was simply a result of the second ex parte applications and this court does not consider that to be a separate, additional, application. The appeal is insufficient as a basis for this motion since Respondent failed to follow the proper procedures and deposit required documents, so the court of appeal issued a notice of default. There was no consideration of the merits. This court did find Respondent's two applications in this court to be meritless but in part because Respondent failed to provide sufficient explanation and evidence. Her claims do appear wholly without merit as presented, but instead presented what could have been a potentially valid issue. The defective papers and the lack of sufficient explanation and evidence means that there remains some possibility that there may have been more validity to her claims which she simply failed to present. Moreover, this limited number of filings simply does not rise to the level which this court finds to be necessary to declare Respondent to be a vexatious litigant. This court also does not find the filings in this action challenging the DVRO itself to be sufficient to support the requested determination under the definition set forth in CCP section 391(b)(5). That provision, as set forth above, states, in pertinent part,

> After being restrained pursuant to a restraining order issued after a hearing pursuant to Chapter 1… of Part 4 of Division 10 of the Family Code, and while the restraining order is still in place, they commenced, prosecuted, or maintained one or more litigations against a person protected by the restraining order in this or any other court or jurisdiction that are determined to be meritless and caused the person protected by the order to be harassed or intimidated.

The appeal, which was abandoned, and the two ex parte applications were merely direct challenges to the DVRO itself and this court also has not found that they caused, or were intended to cause, any harassment or intimidation of Petitioner.

Sanctions

Both parties request monetary sanctions pursuant to CCP section 128.5. CCP section 128.5 gives the court discretion to order a party and/or attorney to pay "reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." CCP section 128.5(a). According, to subdivision (b)(2), "Frivolous" "means totally and completely without merit *or* for the sole purpose of harassing an opposing party." Emphasis added.

These two bases for finding conduct to be "frivolous" have different standards, one objective and one subjective. *Weisman v. Bower* (1987) 193 Cal.App.3d 1231, 1236; *Wallis v. PHL Associates, Inc*. (App. 3 Dist. 2008) 86 Cal.Rptr.3d 297, 168 Cal.App.4th 882, 893 (quoting and relying on *Weisman*); see also *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 649 (in the context of sanctions on appeal but relied on in *Weisman*). As explained in *Weisman*, whether conduct was "totally and completely without merit" is "measured by the objective, 'reasonable attorney' standard," while whether the conduct was "motivated solely by an intention to harass or cause unnecessary delay" is "measured by a subjective standard." At the same time, the court added, "[w]hether sanctions are warranted depends on an evaluation of all the circumstances surrounding the questioned action." Quoting *Bach v. McNelis* (1989) 207 Cal.App.3d 852, at 878–879, the court in *Wallis*, at 893, added that the determination is within the sound discretion of the trial court and that a court of appeal reviewing that exercise of discretion is '"informed by 'several policy guidelines: (a) an action that is simply without merit is not by itself sufficient to incur sanctions; (b) an action involving issues that are arguably correct, but extremely unlikely to prevail, should not

incur sanctions; and (c) sanctions should be used sparingly in the clearest of cases to deter the most egregious conduct.' [Citations.]"'

Under the circumstances here, the court finds neither party to have engaged in frivolous conduct which is wholly devoid of merit or intended to harass. As explained above, Respondent's filings, although unpersuasive are not on their face necessary wholly devoid of merit while this court finds no indication that they were intended to harass. This court has the impression that Respondent in fact felt there to be a valid basis for her efforts challenging the DVRO. Similarly, this court finds there to be some basis for this motion so that it is not frivolous and does not in any way appear designed to harass.

The court DENIES both parties' requests for sanctions.

Conclusion

The court DENIES the motion and all requests for sanctions. Respondent 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.

It is SO ORDERED.

3. 25FL00184 Cowhig/Burns Dissolution

Due to the volume of pleadings and authorities submitted by the parties on the Guardian Ad Litem issue, the court requires more time to analyze and consider its ruling. This Law and Motion matter is continued to November 14, 2025 at 9:30am. The court will not consider any additional pleadings in this matter.

It is SO ORDERED.

4. **SFL082191 Goldberg/Goldberg Dissolution**

Motion to Block Funds in Trust; Set Aside Judgment per F.C. 2122 and 1100(g-h) and Other Relief for Breach of Duty per F.C.721; Allocate Omitted Asset; Breach of Marital Contract Remedies CONTINUED to the law and motion calendar of November 14, 2025, in Department 22 at 9:30 a.m. The court continues this motion to allow the briefing which the court specifies in this ruling. Petitioner may file and serve, at least 16 court days prior to the new hearing, one memorandum of points and authorities, double spaced and not exceeding 15 pages in length, in accord with the standards set forth below. The court will not consider any request for a longer document and will not consider any document which exceeds this limit. Respondent may file and serve, at least nine court days prior to the new hearing, one new opposition brief, also subject to the applicable standards. The court disregards, and will continue to disregard, Petitioner's entire Memorandum filed on July 10, 2025. The court will not allow any further reply or other additional documents and will not consider any other documents aside from those already filed and the two memorandum which the court now allows.

Facts

Petitioner filed this petition for dissolution of marriage with minor child (the "Child") on February 11, 2019. Respondent filed his response on March 15, 2019.

Motion

Petitioner has filed a Request for Order and Motion to Block Funds in Trust; Set Aside Judgment per F.C. 2122 and 1100(g-h) and Other Relief for Breach of Duty per F.C.721; Allocate Omitted Asset; Breach of Marital Contract Remedies.

Respondent opposes the motion and objects to Petitioner's memorandum of points and authorities.

Motion History

Petitioner filed the RFO on May 29, 2025. The RFO did not include a Memorandum of Points and Authorities but only a statement of the purported facts, the nature of the requested relief,

and an attached exhibit. The motion was set for July 11, 2025 but the parties on June 17, 2025 filed a stipulation to continue the motion to July 25, 2025.

Respondent filed opposition papers on June 24, 2025. Petitioner then filed a Memorandum of Points and Authorities (the "Memorandum") on July 10, 2025, more than two weeks after Respondent had submitted his opposition papers and a few days before Petitioner filed her official reply papers on July 17 and 18, 2025.

The court subsequently determined that the matter needed to be set on a different calendar so on July 22, 2025 the court continued the motion again, to September 12, 2025. No other briefing was authorized, and the parties submitted no additional papers following the continuance.

Objections to Petitioner's Memorandum of Points and Authorities

Respondent objects to Petitioner's Memorandum. He objects on the grounds that the Memorandum was filed late, after he filed his opposition, and that Petitioner never provided any discussion of points and authorities, or legal grounds for the motion, in the RFO or its attachments. He contends that this violates the procedural requirements for such a memorandum and results in him having had no notice of, or opportunity to respond to, the legal grounds or arguments for the requested in relief. He also objects on the basis that it is single-spaced, not double-spaced, and, since it is already over 14 pages long, therefore exceeds the applicable formatting requirements and length limitation set forth in CRC 3.1113(d) because it lacks a table of contents or table of authorities and was filed without court permission. He notes that under CRC 3.1113(g), the court should treat this as late-filed papers and thus should disregard it as untimely. He also notes that this means that the RFO as filed violated CRC 3.1112(a), which required such a memorandum to be filed in support of the RFO and motion.

CRC 3.1112(a) states that the "required papers" for motions include a "memorandum in support." CRC 3.1113(a), governing memoranda in support of motions, likewise states that, aside from express exceptions, a party filing a motion "must serve and file a supporting memorandum. The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial…." The memorandum "must contain a statement of facts, a concise statement of the law, evidence and arguments relied on, and a discussion of the statutes, cases, and textbooks cited in support of the position advanced." CRC 3.1113(b). The opening memorandum may not exceed 15 pages. Other provisions governing

papers generally in trial courts dictate the formatting. CRC 2.104 states, in pertinent part, "Unless otherwise specified in these rules, all papers filed must be prepared using a font size not smaller than 12 points. CRC 2.108 states, in pertinent part, "The lines on each page must be one and one-half spaced or double-spaced and numbered consecutively." If a party needs more space to present its arguments, the party may seek court approval to increase the page lengths of its briefs but the party must give at least 24 hours' written notice of and provide reasons for the additional pages. CRC 3.1113. "A memorandum that exceeds the page limits of these rules must be filed and considered in the same manner as a late-filed paper." CRC 3.1113(g). Ordinarily, the court may not grant relief, or grant a motion based on grounds, not asserted in the notice of motion. CCP section 1010; CRC 3.1110(a); see *People v. America Sur. Ins. Co*. (1999) 75 Cal.App.4th 719, 726; *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124; *Kinda v. Carpenter* (2016) 247 Cal.App.4th 1268, 1277-1278. Courts also may refuse to consider any new evidence or arguments not raised in the opening papers, such as those raised for the first time in reply papers. See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538; *Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.

Respondent's argument is persuasive. Petitioner provided no memorandum, or even reference to, any points and authorities in her moving papers. She failed to present the legal basis for the motion or the applicable legal standards or analysis. She filed her Memorandum very late, two weeks after Respondent had filed his opposition. The Memorandum also is single spaced and about fourteen pages long not counting the caption, making it almost two times as long as the allowed length. The line number is also thus off, with about two lines of type for each numbered line. Petitioner therefore failed to comply with the above requirements and as a result failed to give Respondent notice of the legal grounds, applicable, authority, or analysis, for the relief requested. She also failed to give the court proper indication of the bases for the motion, impairing the court's ability to analyze the motion properly. The improper length and formatting also lacked permission and presents an overly lengthy and unclear document.

The court SUSTAINS the objections. The court also CONTINUES this motion to allow the briefing which the court now specifies. Petitioner may file and serve, at least sixteen court days prior to the new hearing, one memorandum of points and authorities, double spaced and not exceeding 15 pages in length, in accord with the above standards. The court will not consider any request for a longer document and will not consider any document which exceeds this limit.

Respondent may file and serve, at least nine court days prior to the new hearing, one new opposition brief, also subject to the applicable standards. The court disregards, and will continue to disregard, Petitioner's entire Memorandum filed on July 10, 2025. The court will not allow any further reply or other additional documents and will not consider any other documents aside from those already filed and the two memorandum which the court now allows.

It is SO ORDERED.

5. SFL094071 Roberts/Roberts Dissolution

APPEARANCES REQUIRED regarding Motion to Set Aside Ex Parte Order Granted 1/31/2025.

Facts

Petitioner filed this action for dissolution of marriage without minor children on July 21, 2023. Respondent filed his response on August 25, 2023.

On January 31, 2025, Petitioner brought an ex parte application for an order that she be allowed to take control of and sell the residential real property at 1421 Jasmine Circle, Rohnert Park (the "Property"). She filed a declaration regarding service for that application, on January 30, 2025, showing that she gave notice of the upcoming ex parte proceeding by e-mail. Respondent failed to oppose the application. The court granted the application and issued an order (the "Sale Order") that Petitioner take control of the Property, take the measures necessary to sell it, and sell it, along with an order for holding the proceeds of the sale.

On March 3, 2025, Respondent submitted an ex parte request to return exclusive control of the Property to him. The court denied that on the basis that there was no demonstrated emergency but set the matter for a hearing of April 17, 2025.

At the hearing of April 17, 2025, which also included a settlement conference, the parties and court addressed outstanding issues and that the parties did not reach a settlement. The issue of the Property control was not resolved, Petitioner indicating an agreement to relinquish control and not sell the Property upon proof that the Property was not in default and under threat of foreclosure sale.

Motion

In his Request for Order ("RFO") and Motion to Set Aside Ex Parte Order Granted 1/31/2025, Respondent moves the court to set aside the Sale Order, claiming that he had not received proper notice of the ex parte application in time to oppose it. He also contends that he has provided proof that the Property is not in default, he purchased the Property prior to the marriage, Petitioner has no financial responsibility for the Property, and Petitioner's only interest is a Moore/Marsden interest which results from Respondent adding Petitioner's name to the title in 2017. He also contends that Petitioner is using her control of the Property to harass him and as leverage against him.

Petitioner opposes the motion. She asserts that the Property is in default and under threat of foreclosure while Respondent is still behind on the monthly payments, she has not contributed to the mortgage because Respondent is behind on his support payments, and this is Respondent's second attempt to set aside the Sale Order.

Applicable Authority

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"), and specifically proceedings pursuant to the Civil Discovery Act set forth at CCP section 2016.010, et seq. 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 Code of Civil Procedure section 473).

Relief from 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.

CCP section 473(b) allows parties to set aside dismissals or defaults, or orders resulting from "equivalent" circumstances, based on mistake, inadvertence, surprise, or excusable neglect. CCP section 473(b). Aside from a default where defendant fails to answer in time, a party may

move to set aside an order that is the "procedural equivalent of a default," and which deprives a party of the party's day in court. *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 618. It therefore applies to situations such as a dismissal for failure attend a hearing or to oppose a motion to dismiss based on failure to prosecute. *Graham v. Beers* (1994) 30 Cal.App.4th 1656, 1661; *Peltier v. McCloud River R.R.Co.* (1995) 34 Cal.App.4th 1809, 1817-1819.

"Surprise" is "some condition or situation in which a party... is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against." *Credit Managers Ass'n of So. Calif. v. National Independent Business Alliance* (1984) 162 Cal.App.3d 1166, 1173.

"Excusable neglect" requires a determination as 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.

Any party affected by an order may apply to the same judge or court that made the order to reconsider the matter and modify, amend, or revoke the prior order. CCP section 1008(a).

The motion for reconsideration must be brought within 10 days of the service of notice of the entry of order. Code of Civil Procedure ("CCP") section 1008. The deadline is extended under the provisions of CCP section 1013. *Forrest v. State of California Dept. of Corporations* (2007) 150 Cal.App.4th 183, 203. CCP section 1013 extends the deadline by 5 calendar days where service is by mail or 2 calendar days where service is by express mail.

A party seeking reconsideration must first demonstrate new facts, law, or circumstances that were not previously considered. CCP section 1008(a); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 692. The moving party must also provide an adequate explanation why the new information

was not provided earlier. *Garcia, supra; Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. The need for an explanation is a requirement for due diligence. *Gilberd*.

Mere lack of a chance to make oral argument is not a valid basis for a motion for reconsideration. *Garcia*, 691; *Gilberd*, 1500. In addition, decisions such as *Film Packages, Inc. v. Brandywine Film Productions, Ltd.* (1987) 193 Cal.App.3d 824, at 829, and *Pender v. Radin* (1994) 23 Cal.App.4th 1807, at 1811-1812, ruled that information was "new" since it was subsequently obtained through discovery and could not reasonably have been provided earlier.

CCP section 1008 does not limit the court's inherent power to reexamine its interim rulings on its own motion and enter a new and different order. *LeFrancois v. Goel* (2005) 35 Cal.4th 1094, 1107; *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156-1157. The court must act sua sponte, but this can be on its own motion or as the result of a party's request. *LeFrancois, supra,* 1108. Such a request can be informal. *Ibid*.

Service and Notice

Petitioner's proof of service for her opposition to this motion shows that she served the opposition by e-mail. It is not entirely clear if this was proper, i.e., pursuant to an agreement, since Respondent is self-represented, since electronic service on self-represented parties is allowed only pursuant to an agreement. CCP sections 1010.6, 1013; CRC 2.251. The history of the case shows that Petitioner has frequently served Respondent by e-mail and Respondent, to the court's knowledge, has never objected or raised the issue. However, there is no indication in the proof of service that Respondent has agreed to electronic service and the court can find no such agreement. Unless Respondent waives this issue, Petitioner must clarify this and show an agreement in order for the service to be considered valid so that the court may consider her opposition.

Discussion

Respondent presents no authority or legal analysis whatsoever. Petitioner likewise presents no legal authority or analysis and instead focuses entirely on the underlying bases for the Sale Order.

However, Respondent asks the court to set aside the Sale Order and does so in part on the basis that he had not received proper notice and was thus unable to oppose the ex parte application and Sale Order. The law governing motions to set aside pursuant to CCP section 473(b), set forth

above, therefore applies on the face of this motion and the court therefore applies that standard, absent a showing that another standard applies.

When a marital community obtains an interest in otherwise separate property, such as where the marital community pays the property's mortgage during the marriage, the "Moore/Marsden" rule provides a formula for awarding the community an interest in the property. *Marriage of Mohler* (2020) 47 Cal.App. 5th 788, 790. The court in *Mohler* explained,

> When an individual enters a marriage owning a piece of real property, and the marital community pays the property's mortgage during the marriage, California law provides a formula through which to apportion the property's value upon the marriage's end. Known as the Moore/Marsden rule, the formula awards the marital community a growing interest in the otherwise separate property as community funds are used to increase the property's equity.

In this instance, Petitioner admits that Respondent acquired the Property as his separate property prior to marriage but she claims a Moore/Marsden interest and she also asserts an interest based on the fact that the parties put her on the title of the Property in 2017, a fact which is not in dispute.

The preliminary issue which Respondent raises, aside from the substantive issues of default and threatened foreclosure, is whether Respondent received proper and sufficient notice to oppose the original application and the Sale Order. A motion to set aside based on lack of notice is largely unrelated to the substantive bases for the Sale Order, which are more appropriate for a motion for reconsideration pursuant to CCP section 1008 or based on the court's inherent authority to reconsider. No party addresses any other grounds for the motion aside from discussing whether the reason underlying the Sale Order, the threat of foreclosure, still exists.

As noted above, the court has found that Petitioner only served the application and gave notice electronically, by e-mail. However, once again, such service and notice are only allowed on a self-represented party pursuant to an agreement. CCP sections 1010.6, 1013; CRC 2.251. As with civil matters generally, CRC 5.165 expressly states that in family-law proceedings, service and notice of ex parte applications by electronic means are allowed only as "permitted." Nothing here

indicates such an agreement and the court notes that Petitioner had previously served Respondent in this litigation by mail.

Otherwise, however, Respondent has failed to demonstrate that the Property is not in default or foreclosure or threatened with a foreclosure sale. His evidence is vague and inconclusive. He does show a "Payment Deferral Agreement" but this is from February 2025, it shows that he was in default, and it shows a limited deferral to allow Respondent an opportunity to bring the mortgage current should he meet specified obligations. Respondent fails to show that he has complied or resolved that. Petitioner, in her opposition, demonstrates that Respondent has defaulted on that deferral agreement and failed to satisfy the terms.

Conclusion

APPEARANCES REQUIRED to address service and notice on Respondent, as well as the current status of the Property payments.

It is SO ORDERED.

END OF TENTATIVE RULINGS