

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002274

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PETITIONER: AMY GOLDMAN

vs.

DEFENDANT: SEYUAN SHUEH, ET AL

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

Defendant Seyuan Shueh’s (“Defendant”) motion for relief from default is GRANTED. (Code Civ. Proc., § 473, subd. (b).) Within seven days after this order becomes final, Plaintiff Amy Goldman (“Plaintiff”) shall submit a declaration of counsel attesting to the reasonable amount of legal costs Plaintiff incurred as a result of defense counsel’s conduct. Defense counsel will be responsible for paying those fees pursuant to Code of Civil Procedure, section 473, subd. (b) (hereafter “Section 473(b)").

Background

This case concerns alleged fraud in the course of a real estate transaction. Plaintiff alleges that in December 2022, she entered into a contract with Defendant to purchase a property at 106 Atherton Avenue in Novato. (Complaint, ¶¶ 1-3.) The property included multiple dwelling units, and Plaintiff purchased the property intending to rent some of them out. (*Id.* at ¶ 28.) Plaintiff alleges that she discovered defective work and habitability issues which have precluded her from renting out the rental units. (*Id.* at ¶¶ 28-29.) She brings claims against Defendant for breach of contract; rescission; fraud; violation of Civil Code, sections 1102 *et seq.*; and deceit.

On April 29, 2024, Plaintiff sought entry of Defendant’s default,¹ and the clerk entered the default the same day. A default judgment against Defendant for \$793,710 issued on January 23, 2025. Defendant now seeks relief from default.

Legal Standard

“ ‘[T]o promote the determination of actions on their merits[,]’ ” Section 473(b) provides for mandatory relief from default based on the movant’s attorney’s conduct. (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 439 [quoting *Even Zohar*

¹ Defendant’s requests for judicial notice are granted. (Evid. Code, § 452, subd. (c).)

Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC (2015) 61 Cal.4th 830, 839].) “[T]he Court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s mistake, inadvertence, surprise, or neglect.” (Code Civ. Proc., § 473, subd. (b).) The attorney’s conduct need not be excusable for relief to be mandatory under this section. (*Vaccaro v. Kaiman* (1998) 63 Cal.App.4th 761, 770.) Where mandatory relief from default is granted, the court must direct the attorney to pay reasonable compensatory legal fees and costs and may impose certain additional penalties at its discretion. (Code Civ. Proc., § 473, subds. (b), (c).)

The movant bears the burden of showing by a preponderance of the evidence that relief under Section 473(b) is warranted. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410; *Kendall v. Barker* (1988) 197 Cal.App.3d 619, 624.) The movant’s showing must consist of specific facts showing that one of the statutory conditions (i.e., mistake, inadvertence, surprise, or neglect) is present and actually caused the default. (Code Civ. Proc., section 473, subd. (b); Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶¶ 5:310 [citing *Hopkins & Carley, supra*, 200 Cal.App.4th 1401, 1410]; *Hodge Sheet Metal Products v. Palm Springs Riviera Hotel* (1961) 189 Cal.App.2d 653, 657 [quoting *Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921]; *Martin Potts, supra*, 244 Cal.App.4th 432, 442.) Section 473(b) is to be liberally construed, with any doubts regarding its application resolved in favor of the party seeking relief from default. (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 371-372.)

A motion for relief from default under Section 473(b) “shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted[.]” (Code Civ. Proc., § 473, subd. (b).)

Discussion

Defendant’s counsel, Daniel Hardy (“Hardy”), attests as follows. Before Plaintiff served Defendant with the complaint in this action, Hardy had been authorized to accept service of the complaint on his client’s behalf and knew the complaint was forthcoming. (Hardy Dec., ¶ 7.) On March 15, 2024, Hardy received an email from Plaintiff’s counsel serving Defendant with the complaint. (*Id.* at ¶ 9.) Hardy states that at this time, he was having difficulty adjusting to practice as a solo practitioner, and particularly with properly calendaring deadlines. (*Id.* at ¶ 10.) He did not forward Plaintiff’s counsel’s email or the attached complaint to Defendant and ultimately forgot to do so. (*Ibid.*)

On April 15, 2024, Plaintiff’s counsel emailed Hardy regarding Defendant’s failure to respond to the complaint. (Hardy Dec., ¶ 11.) Counsel wrote that if no responsive pleading was filed by April 25, Plaintiff would request entry of Defendant’s default. (*Ibid.*) Hardy wrote back on April 17 apologizing for the oversight, saying he would file a responsive pleading as soon as possible and that if it appeared he would be unable to do it by April 25, he would request more time. (*Id.* at ¶ 12.) Also on April 17, Hardy forwarded the complaint to his client and discussed a

responsive pleading. (*Id.* at ¶ 13.) He did not inform Defendant that the deadline to file a responsive pleading had passed or that Plaintiff planned to proceed with default proceedings if a response was not filed by April 25. (*Id.* at ¶ 13.) Defendant was never informed of the deadline to file a response until his attorney advised him that he had missed it and his default had been entered. (Shueh Dec., ¶¶ 7-8.)

Hardy did not properly calendar April 25, 2024 as the last day to file a responsive pleading. (Hardy Dec., ¶ 14.) He did not file a responsive pleading on that day and did not request an extension of time to do so. (*Ibid.*)

Plaintiff's counsel sent Hardy the forms documenting Defendant's default, dated April 29, 2024, on April 30. (Hardy Dec., ¶ 15.) Hardy responded, asking if Plaintiff would withdraw the request for default. (*Id.* at ¶ 16.) Plaintiff's counsel stated that Hardy was welcome to share a proposed stipulation to set aside the default and a proposed draft answer to the complaint, but Hardy did not do so. (*Ibid.*)

This is a textbook of case of default caused by attorney neglect.

Plaintiff argues that Defendant has not fulfilled the requirements of Section 473(b) because his attorney filed a declaration instead of a "sworn affidavit[.]" (Code Civ. Proc., § 473, subd. (b).) Wherever state law requires something to be supported by a sworn affidavit, an unsworn declaration suffices provided it satisfies certain criteria that are satisfied here. (Code Civ. Proc., § 2015.5.)

Plaintiff also argues that counsel's neglect did not cause Defendant's default. Plaintiff explains that Defendant has demonstrated a "pattern" of "defer[ing,]" "deflect[ing,]" and "delay[ing]" resolution at seemingly all cost, including entry of default judgment." (Opposition, pp. 9-10.) She suggests that Defendant and his counsel knowingly defaulted as a matter of legal strategy. That does not make sense. One's permitting a default judgment to be entered against him cannot accurately be described as delaying resolution of a dispute, because the function of a default judgment is to *resolve the dispute* against the defendant. Nor is the Court convinced that an attorney would permit judgment to be entered against his client as a matter of legal strategy. Plaintiff contends that it was unreasonable of Defendant to have relied on his attorney to manage the litigation against him, particularly in light of Defendant's prior experience with the legal system. Section 473(b)'s mandatory relief provision does not contain any requirement that the defaulting party's reliance on counsel be reasonable. The fact that Defendant has prior litigation experience has no bearing on his entitlement to rely on Section 473(b)'s mandatory relief provision. Even if he were a licensed attorney himself, that would not preclude him from relying on his counsel's fault for relief from default. (See *Vaccaro, supra*, 63 Cal.App.4th 761, 771

[“The policy of section 473 that a client should not suffer from the admitted errors of the client's attorney does not disappear merely because the client is also an attorney.”].) “The only exception to the mandatory provision is if the dismissal was ‘not in fact caused by the attorney's mistake.’” (*Ibid.* [quoting Code Civ. Proc., § 473, subd. (b)].) There is no evidence here, as opposed to argument, to establish that Defendant's default was anyone's fault other than his attorney's.

Plaintiff's reliance on *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892 is misplaced. *Carroll* predates the enactment of Section 473(b)'s mandatory relief provision. (*Beeman v. Burling* (1990) 216 Cal.App.3d 1586, 1604.) Under the law as it existed at that time, a party could seek relief under Section 473(b)'s *discretionary* provision based on the idea that their default was the product of their attorney's neglect. (*Carroll, supra*, 32 Cal.3d 892, 898.) However, the party generally needed to demonstrate that the attorney's neglect was excusable. (*Ibid.*) He could only be relieved from default based on *inexcusable* attorney neglect upon a showing of " 'extreme' " neglect " 'amounting to *positive misconduct* ' " sufficient to effectively " 'obliterate[] the existence of the attorney-client relationship[.]' " (*Ibid.* [quoting *Buckert v. Briggs* (1971) 15 Cal.App.3d 296, 301] [emphasis in original].) The portion of *Carroll* Plaintiff relies on interprets the scope of this rule. That is no longer good law now that Section 473(b) provides for mandatory relief from default based on inexcusable neglect by one's attorney. (Code Civ. Proc., § 473, subd. (b); *Beeman, supra*, 216 Cal.App.3d 1586, 1604.)

Finally, Plaintiff argues that Defendant's proposed answer is unsatisfactory. The merits of Defendant's answer are simply not in issue on this motion.

The motion for relief from default is granted.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for October, 2025 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002451

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PETITIONER: CHARLES CARTER

vs.

DEFENDANT: C/O T. ASCENCIO, ET AL

NATURE OF PROCEEDINGS: DEMURRER

RULING

The unopposed demurrer is **SUSTAINED without leave to amend.**

Discussion

Before the Court is the demurrer of Respondents California Department of Corrections and Rehabilitation ("CDCR"), Ascencio and Contreras (collectively "Respondents") to Petitioner Charles Carter's ("Petitioner") Second Amended Petition for a Writ of Mandate. On two previous occasions the Court has sustained demurrers to the petition, each time finding that Petitioner had failed to exhaust administrative remedies. Petitioner filed his Second Amended Petition on June 27, 2025 and Respondents filed a demurrer to the new petition on July 18, 2025.

Petitioner has not filed a response or opposition to the demurrer. The failure of a party to oppose a demurrer may be construed as having abandoned the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Thus, the failure to oppose is treated as consent to the granting the motion. (Calif. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8G.1.) The demurrer is sustained on this basis.

In addition, the second amended petition does not contain any allegations which cure the previously identified defects. As the Court indicated in its previous orders, the written decision from the Office of Appeals dated March 2, 2023 (attached as an exhibit to the amended petition) compels the conclusion that Petitioner did not exhaust all administrative remedies. California Code of Regulations, title 15, chapter 1 sets forth the procedure whereby an incarcerated person may challenge an action by CDCR. To dispute an action by CDCR or its staff, an incarcerated person may submit a written grievance claim to CDCR. (Cal. Code Regs., tit. 15, § 3481, subd. (a).¹) He will then receive a written decision from an Institutional Office of Grievances in the

¹ All further undesignated code sections are to the California Code of Regulations, title 15.

Division of Adult Institutions or from a Regional Office of Grievances in the Division of Adult Parole Operations. (*Ibid.*) To dispute the decision by that entity, the claimant may submit a written appeal and receive a written decision from the Office of Appeals. (*Ibid.*; see also § 3484, subd. (a).) The appeal must be submitted within 60 calendar days of the day the claimant discovers the decision on his initial claim. (§ 3484, subd. (b)(1).) “Discovery occurs when a claimant knew or should have reasonably known of the decision.” (*Ibid.*) The Office of Appeals may reject a claim if it is not submitted within that time frame. (See § 3485, subd. (g)(6)(A).) A claim that is rejected as untimely by the Office of Grievances cannot be appealed further. (§ 3485, subd. (h).) Nonetheless, where the Office of Appeals “rejects” a claim, that “does not constitute exhaustion of all administrative remedies available to a claimant within the department.” (§ 3485.)

Here, the Office of Appeals rejected Petitioner’s appeal as untimely. Petitioner does not dispute that his appeal was rejected, instead he simply argues that Office of Appeals was incorrect in its ruling as to timeliness. However, Petitioner’s assertions fail to raise any recognized exception to the exhaustion of remedies doctrine. (See *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1080.)

Accordingly, the Court does not have jurisdiction to hear this case, and the demurrer is sustained without leave to amend.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 10/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006315

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

PETITIONER: ROBERT ALLEN
RAUDSO

vs.

DEFENDANT: JOSE GUILLEN, ET AL

NATURE OF PROCEEDINGS: MOTION – DEMURRER

RULING

In light of the filing of an amended cross-complaint on October 8, 2025, the demurrer is moot and ordered off-calendar. (Code Civ. Proc., § 472 subd. (a).)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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