

Judge Benson – Law & Motion – Wednesday, August 17, 2022 @ 9:00 AM
TENTATIVE RULINGS

1. 21CV02762 Rump, Joseph et al. v. Clarenbach, Debbie L. et al.

EVENT: Defendant Thomas Clarenbach's Motion to Set Aside Entry of Default

Defendant Thomas Clarenbach's Motion to Set Aside Entry of Default is DENIED. Plaintiff's Request for Judicial Notice is GRANTED. The Court finds that the evidence presented by Plaintiff undermines Defendant's contention that his failure to respond was due to surprise, inadvertence or excusable neglect.

Specifically, the Court finds that Defendant previously filed a timely answer in a case filed not too long ago, case #20CV00769. Significantly, Defendant represented himself in that case all the way through disposition.

Defendant admits that he was served back in December of 2021, which means Defendant has failed to respond for 4.5 months. Defendant's assertion that he was not capable of responding flies in the face of the aforementioned evidence. Further, the Court finds Defendant's argument that he could not afford counsel as unpersuasive, see *Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905-906. In *Davis*, the Court noted that lack of funds did not preclude defendant from representing himself.

Similarly here, lack of funds does not preclude Defendant from representing himself, and the evidence as noted shows that he has done so in the past. Consequently, in light of these facts, the Court finds no legally justifiable reason for Defendant's failure to respond.

As to the request that the Court exercise equitable authority to grant relief, the *Billings v. Edwards* (1981) 120 Cal.App.3d 238 case provides that the inherent equity power applies in cases of extrinsic fraud or mistake. (*Id* at p. 245) Here, the Court finds no evidence supporting either circumstance.

Plaintiffs shall prepare and submit a form of order consistent with this ruling within 10 days.

2. 21CV02943 Wear, Michael v. Canterbury, Steve

EVENT: OEX (continued from 5/4 and 6/22)

The Court will swear in the witness.

3. **22CV00425 Citibank NA v. Miller, Jason A**

EVENT: Defendant's Motion to Vacate Default Judgment

Defendant's Motion to Vacate Default Judgment is Denied without prejudice. The motion fails to contain a proposed answer as provided in CCP § 473(b). The Court will prepare the order.

4. **22CV01406 In re: Apalit, Victor Manlanlan Jr.**

EVENT: Change of Name (Adult)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

5. **22CV01558 Bones, Tomi Passalacqua v. Shaw, Patricia**

EVENT: Petition for Permanent Injunction Pursuant to Civil Code § 798.88

The Petition for Permanent Injunction Pursuant to Civil Code § 798.88 is continued to August 24, 2022 at 9:00am so that the Petition complies with the notice requirements of CCP § 1005.

6-7. **21CV02448 Northern California Collection Service, Inc. v. Felch, Joshuwa et al.**

EVENT: (1) Opposition to Claim of Exemption (Joseph Longiudice)

(2) Opposition to Claim of Exemption (Joshuwa Felch)

The Court will hear from the parties.

8. 22CV00449 Bent, George et al. v. High Speed Demand Inc., et al.

EVENT: Application for Pro Hac Vice Admission

Application for Pro Hac Vice Admission is continued to September 14, 2022 at 9:00am in order to comply with the notice requirements of CCP 1005.