Judge Mosbarger – Law & Motion – Wednesday, October 7, 2026 @ 9:00 AM
TENTATIVE RULINGS

1. **22CV02590 PETERSON, CHELSEA ET AL v. 1271 WHITEWOOD WAY RESIDENCE, ET AL**

EVENT: Plaintiffs' Motion to Vacate February 25, 2026 Order Sustaining DAREC, Inc. dba IPM Chico's Demurrer Without Leave to Amend and any Resulting Dismissal

Code of Civil Procedure §473(b) authorizes the Court, "upon any terms as may be just," to relieve a party "from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect," if the application is made within a reasonable time, not exceeding six months after the judgment or dismissal. The statute also contains a mandatory provision requiring the Court to vacate a default, default judgment, or dismissal "entered against his or her client" when accompanied by an attorney's sworn affidavit attesting to fault. However, the mandatory provision is generally limited to default-type situations (e.g., defaults or dismissals resulting from a failure to respond or appear), and does not automatically apply to judgments entered after the Court sustains a demurrer on the merits. However, here the Court finds that the demurrer is treated as a dismissal motion for mandatory-relief purposes because Plaintiffs Kyle Valezquez and Chelsea Peterson ("Plaintiffs" herein) were deprived of the opportunity to respond (See, *Pagnini v. Union Bank, N.A.* (2018) 28 Cal.App.5th 298), and dismissal was thereafter entered by the Court.

As to mandatory relief, Plaintiffs have failed to meet their burden of establishing entitlement to mandatory relief under *Code of Civil Procedure* §473(b). *Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410 ["The party seeking relief … bears the burden of proof in establishing a right to relief."]. Mandatory relief is available only if the default or dismissal was "in fact caused by the attorney's mistake, inadvertence, surprise, or neglect." *Code of Civil Procedure* §473(b). Here, the Court finds that Plaintiffs' counsel's conduct did not constitute "mistake, inadvertence, surprise, or neglect" within the meaning of *Code of Civil Procedure* §473(b) because it amounted to a deliberate failure to respond. See, *Rodriguez v. WNT, Inc,* (2025) 116 Cal.App.5th 791, 808, citing *Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 Cal.App.4th 1058, 1061-1074.

Plaintiffs' counsel attributes the missed deadline to a failure to monitor an email address associated with his firm, confusion between attorneys at different firms representing different defendants, and a failure to meet and confer with Defendant DAREC, INC. dba IPM CHICO's ("Defendant" herein) counsel. Defendant argues, and the Court agrees, that those failures cannot be divorced from the procedural history of this action. Plaintiffs had already failed to oppose a discovery motion, had already filed an untimely opposition to Defendant's motion for judgment on the pleadings, and would again untimely oppose another defendant's demurrer. Viewed in context, the conduct described in Plaintiff's counsel's declaration reflects not an isolated mistake that a reasonably prudent attorney might make, but a recurring failure to monitor filings, track counsel and deadlines, satisfy meet-and-confer obligations, and timely prosecute Plaintiffs' case.

The Court thus concludes that Plaintiffs' untimely opposition was not an isolated mistake, but further conduct in a pattern of missed deadlines and unopposed motions. The motion for mandatory relief under *Code of Civil Procedure* §473(b) is DENIED.

Under the discretionary portion of *Code of Civil Procedure* §473(b), the moving party must show: (1) The motion is timely; (2) The judgment or dismissal was taken against the party as a result of mistake, inadvertence, surprise, or excusable neglect; and (3) Granting relief would be equitable and not futile in light of other governing statutes (e.g., jurisdictional claim-presentation requirements). As indicated above, the Court finds that Plaintiffs' untimely opposition was not an isolated mistake, but further conduct in a pattern of missed deadlines and unopposed motions. Furthermore, the motion is untimely. *Code of Civil Procedure* §473(b) requires that the application be made "within a reasonable time". Plaintiffs "must also show diligence in filing its application under section 473 after learning about the default. If there is a delay in filing for relief under section 473, the reason for the delay must be substantial and must justify or excuse the delay." *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1181. Here, Plaintiffs' counsel was aware of the Court's ruling on the Demurrer on February 25, 2026, and the instant Motion was not filed until August 24, 2026, 180 days later. There is no explanation by Plaintiffs' counsel for this delay. The motion for discretionary relief under *Code of Civil Procedure* §473(b) is DENIED.

The Motion is DENIED in its entirety. Counsel for the Defendant shall prepare and submit a form of order consistent with this ruling within two weeks.

2. <u>22CV02762 PRYDE, DONALD C v. PRYDE, GARY A ET AL</u>

EVENT: Defendant's Motion to Confirm Sale, and Approve Referee's Report

The Court will make inquiry as to any overbids on the subject real property, if none are received the Court will grant Defendant's Motion to Confirm Sale and Approve Referee's Report, vacate the Status Conference on November 18, 2026, and sign the form of order submitted.

3. <u>23CV00437 PILLSBURY, CHRISTOPHER H v. NATIONAL BUILDERS, INC ET AL</u>

EVENT: Motion to Strike the Answer and Cross-Complaint of Defendant and Cross-Complainant National Builders, Inc.

The Motion to Strike the Answer and Cross-Complaint of Defendant and Cross-Complainant National Builders, Inc. is granted, and the Court will sign the form of order submitted by counsel.

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4. 24CV02342 LOZADA, RACHEL ROMERO v. KEPLEY, DON ET AL

EVENT: Defendant's Motion to Join Necessary Party Peter Setzchen APN 066-510-007

The First Amended Complaint expressly confines the claimed Easement Area to Defendants Don Kepley and Susan L. Keply's ("Defendants" herein) property [APN 066-510-008] and seeks a determination of Plaintiff Rachel Romero Lozada's ("Plaintiff" herein) prescriptive easement rights over that area. Plaintiff does not seek an easement over third-party Peter Setzchen's property [APN 066-510-007] or any other adjudication of his property rights. The Court concludes that it can fully adjudicate whether Plaintiff acquired prescriptive rights over the portion of the easement area located on Defendants' property while leaving any rights concerning Peter Setzchen's property entirely unaffected. *People v. Superior Court of Marin County* (1969) 1 Cal.App.3d 167, 171. Defendant's Motion to Join Necessary Party Peter Setzchen APN 066-510-007 is denied.

5-6. 24CV04338 TORRES, KIMBERLY v. PARK, WILLIAM

EVENTS: (1) Plaintiff's Motion to Compel Defendant William Park to Produce Documents

(2) Plaintiff's Motion to Continue Trial and Related Dates

Code of Civil Procedure §2024.020(a), entitles a party to have discovery motions heard on or before the fifteenth day before the date initially set for trial. Here, this Motion is set for hearing on October 7, 2026, and trial is set to begin on October 12, 2026, only 5 days later. Thus, the Motion is untimely. While the Court does have some discretion to consider late-filed discovery motions under *Code of Civil Procedur*e §2024.050, in consideration of whether to allow a motion concerning discovery heard closer to the trial date, *Code of Civil Procedur*e §2024.050 directs the Court to consider the necessity of the discovery, the requesting party's diligence, possible interference with trial or prejudice to other parties, and the relationship between earlier and current trial dates. These factors weigh in favor of Defendant here, and Plaintiff's Motion to Compel Defendant William Park to Produce Documents is DENIED. The parties' respective requests for sanctions are DENIED. Plaintiff's Motion to Continue Trial and Related Dates is DENIED, the Court not finding good cause for the requested continuance. The Court confirms the Trial Readiness Conference on October 8, 2026 at 1:30 PM and the Jury Trial on October 12, 2026 at 8:00 AM with a 3-5 day estimate. Counsel for the Defendant shall prepare and submit a form of order within two weeks.

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7. 25CV03168 HUCHRO, MONICA A v. PACIFIC GAS & ELECTRIC ET AL

EVENT: Motion to be Relieved as Counsel

The Proof of Service indicates that the Motion was served electronically and by U.S. Mail on September 11, 2026. Pursuant to *Code of Civil Procedure* §1005(b), an additional 2 calendar days' notice is required for service by U.S. mail, and pursuant to *Code of Civil Procedure* §1010.6(3)(B), an additional 1 Court Day notice is required for electronic service. Thus, notice here is insufficient and the Motion is denied. The Court advances the Case Management Conference on calendar October 7, 2026 at 10:30 a.m. to 9:00 a.m. and continues the Case Management Conference to January 6, 2027 at 10:30 a.m. Case Management Conference Statements are to be timely filed and served.

8. 26CV00768 HELLICKSON, REBECCA v. AEGIS TREATMENT CENTER

EVENT: Defendant's Motion to Stay Plaintiff's Complaint

Defendant Aegis Treatment Centers, LLC's ("Defendant" herein) Request for Judicial Notice is granted. The Court finds that because the claims, the putative class, the evidence, and key issues in this action and the first-filed *Hernandez, et al. v. Aegis Treatment Centers, LLC* (Stanislaus County Superior Court Case No. CV-25-005281) action are all identical, Defendant's Motion to Stay is GRANTED pursuant to the doctrine of exclusive concurrent jurisdiction. The Case Management Conference on December 30, 2026 is vacated and this matter is set for a Status Hearing on September 29, 2027 at 10:30 AM. The Court will sign the form of order submitted by Defendant.

9. 26CV00889 MEARS, LAWRENCE B ET AL v. WATTS, MIKAL C ET AL

EVENT: Ex Parte Application to Stay Case During Pendency of Appeal in Related Case

Good cause appearing, Defendants Mikal C. Watts; Guy L. Watts, II; Watts Guerra LLP, a limited liability partnership; Watts Guerra LLC, a Puerto Rico limited liability company (collectively "Defendants" herein) Ex Parte Application to Stay Case During Pendency of Appeal in Related Case is GRANTED. The proceeding is hereby stayed in its entirety, pending resolution of the appeal in *Rosemary Casarotti v. Mikal C. Watts, Guy L. Watts II, Alicia D. O'Neill, Watts Guerra LLP, and Watts Guerra LLC*, Butte County Superior Court case number 25CV02896. The Case Management Conference on December 30, 2026 is continued to February 3, 2027 at 10:30 a.m. for status of the pending appeal.

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10-11. 26CV02127 LYON, RICHARD COLE v. SHELLPOINT MORTGAGE SERVICING (NEWREZ LLC DBA SHELLPOINT MORTGAGE SERVICING) ET AL

EVENTS: (1) Defendant Newrez LLC dba Shellpoint Mortgage Servicing (erroneously sued twice as Shellpoint Mortgage Servicing and Newrez LLC) and Newrez GNMA II's Demurrer to Plaintiff's Complaint

(2) Defendant Newrez LLC dba Shellpoint Mortgage Servicing (erroneously sued twice as Shellpoint Mortgage Servicing and Newrez LLC) and Newrez GNMA II's Motion to Strike Portions of Plaintiff's Complaint

Defendant Newrez LLC dba Shellpoint Mortgage Servicing (erroneously sued twice as Shellpoint Mortgage Servicing and Newrez LLC) and Newrez GNMA II's Demurrer to Plaintiff's Complaint

The Court finds that Plaintiff Richard Cole Lyon ("Plaintiff" herein) has sufficiently plead a cause of action for Quiet Title [see Complaint at ¶¶1, 2, 8, 14, 15, 36, 37, 38, 44, 45, Prayer at ¶¶2, 3, and Exhibit B]; and Declaratory Relief [see Complaint at ¶¶46-49], and the Demurrer to the First and Second Causes of Action is overruled.

In regard to the Third Cause of Action - Violation of Rosenthal Fair Debt Collection Practices Act, 15 U.S.C. §1692g requires that within five days of an initial communication with a consumer regarding a debt, a debt collector must send a written notice to the consumer that includes various required disclosures and information. If a borrower disputes the debt within 30 days of the written notice, the debt collector must cease collection activities until the debt is validated. See, 15 U.S.C. §1692g(a), (b). Here, the Court finds that this Cause of Action has been insufficiently plead as there is no allegation that Defendant Shellpoint did/did not send the required notification to Plaintiff. Without such an allegation, the Court is left to assume that it was included in the original correspondence to determine whether the ongoing attempts to collect are actionable. The Demurrer to the Third Cause of Action is sustained, with leave to amend.

As to the Fourth Cause of Action - Violation of the Unfair Competition Law (UCL, a private plaintiff must demonstrate only that they have "suffered injury in fact" and "lost money or property" as a result of the unfair competition. To satisfy this economic injury requirement, a borrower must establish a concrete, particularized, and actual loss or deprivation of money or property. In lending and foreclosure disputes, a borrower may plead economic injury by showing: (1) The loss of their real property through foreclosure proceedings; (2) The payment of illegal interest, finance charges, or fees they otherwise would not have paid; or (3) The deprivation of money or property to which they have a cognizable claim, or having a present or future property interest diminished. See, Lagrisola v. North American Financial Corp. (2023) 96 Cal.App.5th 1178; Kwikset Corp. v. Superior Court (2011) 51 Cal.4th 310. The Court finds that Plaintiff has done so here [see Complaint at ¶¶56-65], and the Demurrer is overruled as to the Fourth Cause of Action.

As to the Fifth Cause of Action for Real Estate Settlement Procedures ("RESPA"), the Court finds that Plaintiff has sufficiently plead actual damages that are related to the

alleged RESPA violation [see Complaint at ¶¶70-71], and the Demurrer is overruled as to the Fifth Cause of Action.

As to the Sixth Cause of Action for Violation of the Homeowner's Bill of Rights, demurrers for uncertainty are disfavored and will be "granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." Lickiss v Financial Indus. Regulatory Auth. (2012) 208 Cal.App.4th 1125, 1135. Additionally, because ambiguities can be clarified through discovery, courts will strictly construe demurrers for uncertainty. Likiss v Financial Indus. Regulatory Auth., supra; Khoury v Maly's of Cal., Inc. (1993) 14 Cal.App.4th 612, 616. The Court finds that the Complaint is not so incomprehensible that the Defendants cannot reasonably respond and the Demurrer is overruled on that basis. The Court finds that Plaintiff has stated facts sufficient to constitute a cause of action for Violation of the Homeowner's Bill of Rights – Civil Code §§2923.5, 2923.7, 2924.12 [see Complaint at ¶¶72-83], and the Demurrer is overruled as to the Sixth Cause of Action.

Finally, in regard to the Seventh Cause of Action for Injunctive Relief, "[i]njunctive relief is a remedy, not a cause of action." Ivanoff v. Bank of America, N.A. (2017) 9 Cal.App.5th 719, 734. As such, the demurrer to the Seventh Cause of Action is sustained, without leave to amend.

Plaintiff is granted leave to amend as indicated above. Any Amended Complaint shall be filed within 20 days' notice of this Order The Court will utilize the form of order submitted by counsel.

Defendant Newrez LLC dba Shellpoint Mortgage Servicing
(erroneously sued twice as Shellpoint Mortgage Servicing and Newrez LLC) and Newrez GNMA II's Motion to Strike Portions of Plaintiff's Complaint

Under California law, a self-represented (pro se) plaintiff generally cannot recover attorney's fees because they do not pay or incur any out-of-pocket liability for legal representation. Trope v. Katz (1995) 11 Cal.4th 274; Mix v. Tumanjan Development Corp. (2002) 102 Cal.App.4th 1318. Consequently, a request for attorney's fees in a complaint by a self-represented plaintiff is improper and is subject to a motion to strike under Code of Civil Procedure §436. Quiroz v. Seventh Ave. Center (2006) 140 Cal.App.4th 1256. There are narrow exceptions where a self-represented plaintiff may recover attorney's fees, which would protect such requested relief from a motion to strike; however, here the Court finds that based on the allegations of the Complaint, none of the exceptions apply. The Motion to Strike Portions of Plaintiff's Complaint is granted as to attorney's fees, with the Court striking the following:

Paragraph 54, Page 11, line 54, of the Complaint: "attorney's fees and costs."

Page 18, line 23, of the Complaint: "For costs and reasonable attorney's fees."

The Motion to Strike is otherwise denied.

Plaintiff is granted leave to amend. Any Amended Complaint shall be filed within 20 days' notice of this Order. The Court will utilize the form of order submitted by counsel.

12. 26CV02704 FRANK LEWIS AS DIRECTOR/SECRETARY GOLDEN BEAVER DISTILLERY INC ET AL v. KRIS KOENIG AS CEO GBD INC ET AL

EVENT: Plaintiffs' Motion to Enforce Existing Production Obligations; to Require Accounting of Court-Restricted Sale Proceeds; to Compel Additional Director Inspection; and, in the Alternative, for Appointment of Inspector or Accountant

On July 27, 2026, this Court issued a Temporary Restraining Order that required Defendants "no later than 08/12/2026, [to] produce to Plaintiff's counsel complete copies of the Company's bank records, transaction histories, stock ledgers, payroll records, and credit card statements from 2019 to present. Defendants shall within 15 days provide all information in Defendants' possession regarding the ownership, control, and affiliation, if any, of 'Little Opposition…'." The Court finds that Defendant Kris Koenig's production of documents in regard thereto is sufficient and no further production is required. Should Plaintiff seek additional information, such requests must be made pursuant to *the Code of Civil Procedure*/Civil Discovery Act. The Motion is DENIED.