

Nationwide Insurance Company of America v. Cervantes et al. (26CV00348)

Hearing Date: July 1, 2026
Nature of Proceeding: Motion: Set Aside Default and Default Judgment

Attorneys:

For plaintiff Law Offices of Jay W. Smith by Jay W. Smith, Esq., Nancy A. Young, and Rod Tuazon, Esq.,

For defendant Self-Represented Litigant

Tentative Ruling:

For all the reasons discussed below, the motion is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)

Background:

This is a complaint for damages in subrogation in the amount of \$82,194.66. Plaintiff alleges that on May 10, 2024, its insured was driving a vehicle when it was struck from behind by a vehicle driven by defendant Arnulfo Avalos Cervantes that was owned by defendant Katia Jasso.¹ As a result, it paid \$32,194.66 in property and incidental damages, and \$50,000 for bodily injury. The complaint was filed on January 16, 2026. Defendant Jasso was personally served on February 25, 2026. (Proof of Service—Summons and Complaint filed March 10, 2026.) Default was entered on March 30, 2026.

On May 1, 2026, defendant Katia Jasso filed a timely motion to set aside the default and the default judgment pursuant to Code of Civil Procedure section 473 subdivision (b). Opposition has been filed. All briefing has been examined.

Code of Civil Procedure section 473, subdivision (b) provides that the court may, upon “any terms as may be just, relieve a party or his or her legal representative from a judgment . . . taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect . . .” Relief is discretionary. (Code Civ. Proc., § 473, subd. (b); see *Lorenz v. Commercial Accept. Ins. Co.* (1995) 40 Cal.App.4th 981, 989.) The party moving for relief based on “mistake, inadvertence, surprise, or excusable neglect” must show specific facts demonstrating that one of these conditions was met. (*Hopkins & Carley v. Gens* (2011) 200 Cal.App.4th 1401, 1410—defendant’s burden to demonstrate “that due to some mistake, either of fact or of law, of himself or of his counsel, or through some inadvertence, surprise or neglect which may properly be considered excusable, the judgment or order from which he seeks relief should be reversed.”) The application must be made within a reasonable time, not exceeding six months after the judgment. (Code Civ. Proc., § 473, subd. (b).)

¹ The complaint alleges she is otherwise known as Katia Herrejon or Katia Jasso Herrejon. She will be referred to as Katia Jasso in this ruling.

Here, defendant concedes that she was served as described in the Proof of Service of Summons. She states that her failure to respond was the result of inadvertence, surprise, mistake, or excusable neglect because: “Since I was not involved in the accident, I did not know why I was also getting notices and sued. Also, all liabilities to do with [the vehicle] fall under Arnulfo Avalos Cervantes. After getting the summons notice, I suffered a concussion and had to also get dental treatment out of the country.” (Jasso Decl., ¶ 10.) She states: “During the divorce agreement and in the dissolution, it is stated that car [], including all liability would and will stay with Arnulfo Avalos Cervantes.” (*Id.* at ¶ 12.) A proposed answer is attached to the motion in which she generally denies all allegations and affirmatively alleges the May 30, 2024, Judgment dividing property as a defense.

Excusable neglect depends upon whether the moving party has shown a reasonable excuse. (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905.) The test is one of reasonable diligence. (*Jackson v. Bank of America* (1983) 141 Cal.App.3d 55, 58.) Relief is inappropriate where the default could have been avoided through ordinary care. (*Elms v. Elms* (1946) 72 Cal.App.2d 508, 513.) “The only occasion for the application of section 473 is where a party is unexpectedly placed in a situation to his injury without fault or negligence of his own and against which ordinary prudence could not have guarded.” (*McClain v. Kissler* (2019) 39 Cal.App.5th 399, 414-415.)

Defendant’s declaration is insufficient to establish excusable neglect Her declaration admits she was served with the complaint and that she understood what it was. She simply assumed it was in error. In other words, her declaration establishes a conscious decision not to respond, not excusable neglect. The proof of service indicates that defendant was served with the complaint and the summons, which states: “You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on plaintiff.” (Summons, SUM-100.) A reasonably prudent person would not have read this and ignored the lawsuit just because she believed plaintiff had served the wrong person.

Defendant Jasso asserts she suffered a concussion and required a dental procedure after being served. Evidence the defendant was seriously ill, or feeble, or unable to understand that he or she was being served with process, is sufficient to justify discretionary relief under section 473, subdivision (b). Such evidence shows “excusable neglect” in allowing default to occur. (See *Kesselman v. Kesselman* (1963) 212 Cal.App.2d 196, 207-208.) *Kesselman* is, however, factually distinguishable. In *Kesselman*, the court affirmed a grant of relief from default under section 473 where an elderly defendant testified, he was “mentally ill” as a result of a series of strokes he suffered at the time he received the summons and complaint and his long-time attorney testified that after the strokes he was easily confused when conducting his business affairs. (*Kesselman, supra*, at pp. 198, 200.) There is no such evidence here. In fact, there is evidence that defendant Jasso understood what she was being served with. Absent evidence that suggests these physical issues prevented defendant Jasso from responding to the complaint, the court cannot find excusable neglect.

Based on the present record, the court cannot find that the failure to respond was the result of excusable neglect. The motion is accordingly denied.