
PARTIES/ATTORNEYS

Plaintiff	Charlotte Harris, individually and as trustee of The Harris Trust	Legal Aid Foundation Kate Lee
Defendant	Maricruz and Jesus Rodriguez	Esparza Law Group Luis Esparza

RECOMMENDATION

For all the reasons discussed below, the motion to set aside default is granted. Defendants are directed to submit a proposed answer that is statutorily compliant before the hearing on this matter.

On April 16, 2025, plaintiff Charlotte Harris, individually and as trustee of the Harris Trust, filed a complaint alleging she is the owner of property located at 873-875 Highway 246 in Buellton. Defendants Maricruz and Jesus Rodriguez began renting a mobile home on their property in 1991. In 2020, Maricruz Rodriguez took plaintiff to an attorney ostensibly to obtain documents authorizing defendants to help her with financial, medical, and other decisions. Plaintiff was presented with documents and signed them with that understanding. Plaintiff subsequently discovered that she instead had instead signed a promissory note indebteding her to defendants in the amount of \$128,000 and gave defendants a lien with the power to foreclose on the property in the event of nonpayment.

As a result, on April 10, 2025, plaintiff filed requests for an elder abuse restraining order against the defendants. (Case Nos. 25CV02192, 25CV02187). On April 16, 2025, she filed the complaint in this action alleging the following causes of action: (1) elder abuse; (2) fraud; (3) cancellation of instrument; and (4) quiet title. On April 24, 2025, she filed an unlawful detainer action. (Case No. 25CV02545.)¹

Plaintiff took defendants' default in this matter on June 17, 2025. A request for court judgment was submitted on July 18, 2025, but the court took no action on it. Defendants are currently in default.

On August 6, 2025, defendants filed a motion to set aside default. Attorney Luis Esparza substituted into the case on or about June 4, 2025. Mr. Esparza

¹ The unlawful detainer action has been resolved by stipulation. (Case No. 25CV02545, Stipulation for Entry of Judgment dated 6/10/25.)

emailed plaintiff's counsel indicating his representation. On Monday, June 9, 2025, plaintiff granted defendants' an extension "until Friday morning" to file a response. The deadline thus would have been Friday, June 13, 2025. However, attorney Esparza states "my office inadvertently indicated the due date as Friday of the following week, June 20, 2025." (Esparza Decl., ¶ 7.) As noted, on June 17, 2025, defendants' default was taken.

Code of Civil Procedure² section 473, subdivision (b), allows a court to vacate a default on two distinct grounds. (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144 (*Younessi*)). First, the trial court has discretion to "relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise or excusable neglect." (§ 473, subd. (b).)

The second basis for relief, and the one at issue here, is the attorney fault provision. (*Younessi, supra*, 244 Cal.App.4th at p. 1147.) This relief is mandatory and is available to vacate any default, default judgment, or dismissal "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." (§ 473, subd. (b); *Carmel, Ltd. v. Tavoussi* (2009) 175 Cal.App.4th 393, 399 (*Carmel, Ltd.*)).

The purpose of the attorney fault provision "is to 'relieve the innocent client of the burden of the attorney's fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.'" (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839.) Thus, it protects only the innocent client, not the culpable client who participates in conduct that led to the default. (*Carmel, Ltd. supra*, 175 Cal.App.4th at p. 400.)

Unlike the discretionary ground for relief, a motion based on attorney fault need not show either diligence in seeking relief or that the error was excusable. (*Younessi, supra*, 244 Cal.App.4th at p. 1147; *Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 439 (*Martin Potts*)). Because the court properly grants relief only when the attorney, rather than the client, is the cause of the default, default judgment, or dismissal, the focus is on *who* is to blame, not *why*. (*Martin Potts, supra*, 244 Cal.App.4th at p. 439.) Accordingly, in many cases, the reasons for the attorney's mistake, inadvertence, surprise, or neglect are irrelevant. (*Ibid.*)

Attorney Esparza has filed a declaration clearly stating his office miscalendared the deadline for filing a response. Plaintiff points out that "it took over six weeks to file this motion for relief. The excessive delay [in filing this

² All further statutory reference are to the Code of Civil Procedure unless indicated otherwise.

motion] calls into question the credibility of the claim.” (Opposition, p. 8, ll. 24.) However, attorney Esparza explains that the motion was to be filed in late June but was delayed by his unavailability. (Esparza Decl., ¶ 15.) The court has no reason to discredit this representation.

In any event, unlike the discretionary ground for relief, a motion based on attorney fault need not show diligence in seeking relief. The motion is timely if filed within six months of the entry of the default judgment or dismissal. (*Younessi, supra*, 244 Cal.App.4th at 1147; *Milton v. Perceptual Development Corp.* (1997) 53 Cal.App.4th 861, 868 [section 473's attorney-fault provision “no longer includes a requirement of diligence and such motions are timely [when] ... brought within six months after entry of ... judgment”]; *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 292, 32 Cal.Rptr.2d 408 [same].) As diligence is not required, the court rejects plaintiff's argument that excessive delay in filing the motion calls into question the credibility of the claim that attorney Esparza both miscalendared the deadline and was unable to file the motion earlier than six weeks from the date his mistake was discovered.

The mandatory provision does require that the motion be “in proper form,” which encompasses the requirement that a proposed answer accompany the application. (*Carmel, Ltd., supra*, 175 Cal.App.4th at 401; see also *Rodriguez v. Brill* (2015) 234 Cal.App.4th 715, 728.) Here, a verified complaint was filed. The proposed answer attached to the motion is a general denial. A general denial is *not* sufficient to controvert a *verified* complaint, even if the answer, containing such denial, is verified. A verified complaint must be denied “positively” or according to information and belief. (§ 431.30(d); see *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 476.) In other words, the allegations of a verified complaint must be denied specifically. (*Paul Blanco's Good Car Co. Auto Group v. Sup.Ct. (People)* (2020) 56 Cal.App.5th 86, 111.)

Although the proposed answer is insufficient, the court nevertheless recognizes the purpose of the mandatory relief provision of section 473 is “to alleviate the hardship on parties who lose their day in court due solely to an inexcusable failure to act on the part of their attorneys.” (*Zamora, supra*, 28 Cal.4th at p. 257.) In light of this purpose, the concludes defendants' proffer of a proposed answer substantially complied with the requirements of the mandatory relief provision of section 473, subdivision (b) and directs defendant to submit a proposed answer that is statutorily compliant before the hearing on this matter.

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.](#))

