Law Offices of R. Morgan Holland v. Ruiz (25CV01342)

Hearing Date: May 12, 2026
Nature of Proceeding: Motion: Set Aside Default and Default Judgment

Attorneys:

For plaintiff Law Office of R Morgan Holland by R Morgan Holland

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 dispute for breach of contract in the amount of $37,293.66. Plaintiff alleges he rendered legal services pursuant to a written contract to defendant Alejandro Ruiz, and that Ruiz failed to pay the bill. The complaint was filed on March 3, 2025, and served on July 17, 2025, by substitute service. Defendant failed to file an answer and his default was taken on October 28, 2025. A clerk's judgment was filed on November 18, 2025.

On February 5, 2026, defendant filed a timely motion to set aside the default and the default judgment pursuant to Code of Civil Procedure section 473 subdivision (b).[1] No opposition has been filed.

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 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 on the basis of "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] Defendant filed his motion using a "check box" form, in which he checked boxes related to Code of Civil Procedure section 473.5 (lack of actual notice) and Civil Code section 1788.61, asserting no actual notice to a lawsuit brought by a debt buyer. However, defendant concedes that he was served by summons. There is no basis for finding that no actual notice resulted.

Here, defendant concedes that he was served as described in the Proof of Service of Summons, and that he learned about the lawsuit by said service. He states that his failure to respond was the result of inadvertence, surprise, mistake, or excusable neglect because: "I was waiting to receive a notice to appear in court, as I believed that was the proper procedure in order for me to respond. I was unaware that I needed to file a response in order to obtain a court date." (Ruiz Decl., ¶ 10.) There are no other facts asserted.

This is insufficient. 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 defendant's mere failure to read a summons is not excusable. (*Gilio v. Campbell* (1952) 114 Cal.App.2d Supp. 853, 857—rejecting assertion that failure to respond was excusable neglect when "a mere reading of the summons served on the defendant would have informed him that if he did not appear and answer the complaint within [30] days, a judgment could be taken against him"; *Essig v. Seaman* (1928) 89 Cal.App. 295, 298-300; *Gillingham v. Lawrence* (1909) 11 Cal.App. 231, 233-234; *Garner v. Erlanger* (1890) 86 Cal. 60, 63.)

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.