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5 Defendant, In Pro Per
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **CONTRA COSTA COUNTY**
10

11 EUGE

REZ,

No.

12 Plaintiffs,

13 vs.

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and DOES 1-10,

AM,

16
17 Defendants.
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MOTION FOR RECONSIDERATION OF ORDER DENYING DEFENDANT'S REQUEST TO SET ASIDE DEFAULT; QUASH SERVICE OF SUMMONS, COMPLAINT AND BENCH WARRANT; AND DISMISS PENDING ORDER OF EXAMINATION AND/OR IN THE ALTERNATIVE MOTION TO RENEW ORIGINAL MOTION

20 DATE: February 3, 2022

TIME: 9:00 am

DEPT: 7

JUDGE: HON. BARRY BASKIN
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23

24 TO

ATTORNEY FOR THE PLAINTIFFS:

25 PLEASE TAKE NOTICE that in accordance with California Code of Civil Procedure
26 Section 1008, on February 3, 2022 at 9:00 am in Dept. 7, in front of the Honorable Barry Baskin,
27 in the Contra Costa County Superior Court, located at Wakefield Taylor Courthouse, 725 Court
28 Street, Martinez, CA 94553, the defendant be moving this court for a reconsideration of the

1 denial of his motion to set aside the default judgment, to quash service of the summons,
2 complaint and bench warrant, and the pending order of examination of the judgment debtor.

3 After the court has ruled on a motion, in limited circumstances, it may be appropriate for
4 the moving party or any affected party to seek reconsideration. See Cal. Code Civ. Proc.
5 §1008(a), (b). When a motion for reconsideration is made, it must be supported by an affidavit or
6 declaration that describes the prior motion, the judge and ruling on the prior motion, and what
7 new or different facts, circumstances, or law are claimed to warrant reconsideration. Cal. Code
8 Civ. Proc. § 1008(a), (b).

9 This motion is written to the best of the signer's knowledge, information, and belief,
10 formed after a reasonable inquiry, is not being presented for any improper purpose, and it has a
11 basis in law and in fact.

12 This motion is based upon this notice, the pleadings, the records, and files in this action,
13 the attached memorandum of points and authorities, and the attached declarations of the
14 defendant and his paralegal.

15 January 18, 2022

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. STATEMENT OF FACTS

3 Plaintiffs filed this legal malpractice suit on August 7, 2013. They filed a proof of service
4 for the summons and complaint on November 27, 2013, which listed the “party served” as
5 “K ham.”

6 Nothing was listed under the second paragraph, which states, “I served copies of,”
7 followed by a blank space. The address where service occurred was listed as “25A Crescent Dr.,
8 #726, Pleasant Hill, CA 94523 (BUSINESS),” which is stated to be a UPS store on the proof.

9 The service is stated to have been “by substituted service” and to have occurred on
10 September 20, 2013. The proof states the documents were left with “Laurie Dellar – Manager
11 [...] a person at least 18 years of age apparently in charge at the office or usual place of business
12 of the person to be served.” The proof goes on to state that the documents were then mailed on
13 September 24, 2013 from Lafayette, CA. The document is signed by a registered California
14 process server, Stephen Hutson.

15 On December 9, 2013, a second proof of service was filed. This document states the
16 relevant documents that were served on “Law Offices c ham” pursuant to Code
17 of Civil Procedure, section 415.95, on August 28, 2013.

18 The proof of service indicates the service was made by leaving a copy of the documents
19 with a secretary, Vina Venegas, at 1575 Treat Blvd., Suite 105, in Walnut Creek.

20 The documents were then mailed. Plaintiffs served statements of damages and the
21 defaults of both defendants (I ham) in
22 May, 2014 also by mail.

23 A prove-up hearing was held on June 2, 2014. The defendant received no notice of this
24 hearing beforehand. At the hearing, minutes indicate “an oral motion” was granted to “amend
25 the names of the defendants to K ham.” A judgment was entered the same day for
26 \$550,679.

27 In 2018, plaintiffs began collection efforts including seeking an order for examination as
28 to Ke am. Again with nothing being served upon the defendant beforehand.

Multiple orders were issued, but no examination went forward due to the defendant
failing to appear because he had no notice. Efforts to conduct a debtor examination led to

1 counsel for plaintiffs finally establishing contact with defendant, shortly after which defendant
2 brought this motion.

3 Defendant, who is representing himself, challenged the service of the summons and
4 complaint. He contends he did not have notice of the lawsuit until August 24, 2021.

5 Defendant contends service was defective because the office on Treat Boulevard was
6 closed by the time service is alleged to have occurred.

7 In support of this point, defendant K€ m states in a declaration that his
8 address “has always been listed on the State Bar’s website.” He provided a letter Dated March
9 28, 2013, to office employees stating, “I intend to close the law practice effective May 31,
10 2013.”

11 Defendant quotes a number of statutes, and pointed out that the spelling of their names
12 incorrectly included an extra letter. In opposition to the motion, plaintiffs argue service was
13 proper, defendants had actual notice, and the time to argue lack of notice has expired.

14 Plaintiffs’ attorney submits what he contends are handwritten notes from a telephone
15 conversation with defendant following the filing of the lawsuit, during which defendants offered
16 to settle.

17 He also submits a settlement agreement he allegedly prepared after the conversation.
18 However, nothing has been shown to have actually come from the defendant – nothing signed,
19 nor any emails or faxes supposedly sent by the defendant to plaintiffs’ attorney.

20 Plaintiff did not submit any evidence to this court in the way of a phone log to
21 show a call was made to the defendant. Nor was any proof given to show how this
22 supposed settlement agreement was transmitted to the defendant either. A fax would have a
23 receipt as well as an email – *but nothing had been provided the court to show any such
24 interactions between the plaintiffs’ attorney and the defendant.*

25 A declaration from Jeanne M. Kosta, the co-owner of the company that was responsible
26 for service of defendants, Professional Process Servers, is submitted to correct a blank
27 inadvertently left on the originally filed proof of service with respect to the individual defendant.
28 Attached to her declaration is an amended proof of service signed by the original process server,
Stephen Hutson.

//

1 In reply to the opposition, defendant states he is disputing jurisdiction and they confirm
2 this is based on lack of actual notice. He argues Vina Venegas was never an employee of
3 defendant, and that the service on her was five months after his law firm closed – and thereby
4 difficult to believe.

5 On October 20, 2020, plaintiffs filed an opposition to defendant’s motion for an order to
6 (1) set aside default and default judgment, (2) quash service of summons, complaint, and bench
7 warrant, and (3) dismiss the pending order of examination.

8 On November 5, 2020, defendant filed a reply to plaintiffs’ opposition to his motion for
9 an order to (1) set aside default and default judgment, (2) quash service of summons, complaint,
10 and bench warrant, and (3) dismiss the pending order of examination.

11 On November 12, 2020, a hearing was held on the defendant’s motion for an order to (1)
12 set aside default and default judgment, (2) quash service of summons, complaint, and bench
13 warrant, and (3) dismiss the pending order of examination. The motion was granted in the
tentative ruling.

14 The plaintiffs then filed supplementary evidence, to which the defendant filed his
15 response on November 17, 2020.

16 On December 10, 2020, a hearing was held on the matter of defendant’s motion to (1) set
17 aside default and default judgment, (2) quash service of summons, complaint, and bench warrant,
18 and (3) dismiss the pending order of examination. The defendant’s motion was denied at that
hearing.

19 On December 19, 2021, the defendant attempted to file an Answer to the complaint, but
20 he was denied this by the clerk who indicated he “had to get an order from the judge allowing
21 him to do this first.” *A copy of this Answer is attached as Exhibit 1 to this motion, along with*
22 *proof of the clerk’s denial of his filing.*

23 On January 6, 2021, plaintiffs’ attorney handed the defendant a copy of his notice of
24 entry of order. *A copy of this is attached as Exhibit 2.*

25 ///

26 ///

27 ///

1 **II. NEW INFORMATION RECENTLY OBTAINED BY THE**
2 **DEFENDANT RELEVANT TO THE RECENT ORDER**

3 The defendant hired a new paralegal named Gabriella Reyes in order to assist him with
4 this case. This paralegal remembered a case involving service by people who misrepresented
5 being actual process servers in declarations submitted to the court.

6 Because of her past experience with fraudulent proofs of service, she went to investigate
7 the credentials which the process servers, and the plaintiffs’ attorney, both who signed Proof of
8 Service forms and gave signed declarations to this court under penalty of perjury.

9 At no time has the plaintiffs’, nor these “process servers” produced any signed Notice
10 and Acknowledgement signed by the defendant, nor do they state even in their declarations, let
11 alone the proofs of service, that this form was even sent to the defendant. *Therefore, we believe*
12 *it is a “mistake” that this court deemed their service as perfected to have entered a default*
judgment against the defendant.

13 The new paralegal has uncovered new information that the court may deem relevant to
14 this matter. For example, both process servers in this case claim to be working for a business
15 named “Professional Process Service “as listed on their proofs of service, and on their
16 declarations.

17 A copy of the DBA “doing business as” filing shows that this doing business as
18 certificate expired as of 2018. This “dba” also states Stephen’s name is “Stephen Kosta”,
19 possibly Jeanne’s husband. *A copy of this “dba” is attached as Exhibit 3.*

20 This DBA does not appear in County Records until later in 2013 when these services
21 were claimed to have been completed, including the proof of services and declarations signed.
22 *Also noted with the “dba” where the Kosta’s claim to have run their advertisements on*
23 *September 26, 2013, and October 3, 10 and the 17th, 2013. These dates are **post** the dates upon*
which they claim to have served the defendant as working for this company preformation.

24 **Jeanne Kosta** alleges she served the defendant on August 28, 2013, at 2:00 pm, claiming
25 “Contra Costa Registration #861” which predates the 9/26/13 ad running date. The registration
26 as “Contra Costa Registration #861” can not be verified with the County Recorder Office. Here
27 she indicated she sub-served the defendant’s unknown secretary named Vina Venegas, at a
28

1 closed office she claimed to have visited at 1575 Treat Blvd., Suite #105, Walnut Creek,
2 California, 94103.

3 *Stephen Hutson*, who also cites a non-verifiable process server registration number of
4 #586, claims he sub-served the defendant on September 20, 2013, at 25A Crescent Drive #726,
5 Pleasant Hill, CA 92423. This service date as before which the DBA was filed. The
6 “Registration Number” again can not be verified with the County Recorder Office.

7 Not only is a process server required to attempt personal service at least a few times
8 before resorting to sub-service, which wasn’t attempted even once, but no evidence of an attempt
9 was made to determine if this “Vina” or “Laurie” were “*a person apparently in charge of his or*
10 *her office, place of business, or usual mailing address other than a United States Postal Service*
11 *post office box, at least 18 years of age, who shall be informed of the contents thereof.*”

12 Neither party was “informed of the contents”, nor was an attempt made to determine if
13 these people were over 18 years of age, and “in charge of his or her office” either.

14 Jeanne and Stephen both claim they “mailed a copy” to the defendant at these addresses
15 also, but there’s nothing noted about the **required Notice and Acknowledgment Form being**
16 **included in that mailing** – of which “service is not complete’ until it’s been signed and returned
17 by the defendant.

18 For each of these sub-services on the defendant, the Kosta’s had apparently not ran their
19 ads to obtain a “DBA”, the “dba” appears to have been in place when they signed the proof of
20 services alleging, they were performed word with a non-existent company, with non-verifiable
21 “license numbers”. The person as “Stephen Hutson” was not identified as a process server.

22 When looking up Stephen’s name online using the address as a cross-reference, his name
23 appears to be Stephen Kosta, possibly, Jeanne’s husband, not “Stephen Hutson”.

24 Therefore, there appears to be support for having reason to believe there is no “Stephen
25 Hutson”. *A copy of this listing is attached as Exhibit 4.*

26 In order to be a licensed process server, one must have a bond and file a statement with
27 the recorder’s office regarding that bond. While only required to do this if serving more than 10
28 papers in said county, these two servers listed themselves as licensed process servers on these
papers filed with the court when in fact they don’t appear to have been such as claimed or within
the timeframe.

1 When checking on Stephen Paul Hutson’s (who we suspect is actually Stephen Kosta),
2 Process Server Detail Report, American Contractors Indemnity Company was contacted about
3 this bond. They supposedly issued his bond he claims to have on this report.

4 Only when calling them, they reported not only was there no bond with their company
5 under this name of Stephen Hutson or Stephen Kosta, nor any bond number as listed on this
6 report, but further that their bond numbers aren’t even numbered in the manner. American stated
7 all of their bonds start with “100” as Jeanne Kosta’s bond number appears.

8 Gabriella Reyes called the Records Office and was told that as their normal policy, they
9 do not verify these bonds are valid as claimed, but just record what’s given to them. Nor do they
10 verify anyone’s identification either.

11 In other words, anyone could have claimed they were “Stephen Hutson” and that this was
12 their bond number, and the court would have recorded it as they did in 2020. This just further
13 backs up the defendant’s suspicion there is no such person as a “Stephen Hutson” and they not
14 only lied about being a process server, but lied to the Records office about having a bond. *A*
copy of this report is attached as Exhibit 5.

15 Further, note that on Stephen’s Process Server Detail Report, with an application for this
16 recording in August of 2020 – which was years after he supposedly had served the defendant in
17 this case.

18 On Jeanne’s Process Server Detail Report, it also states she filed her bond in January of
19 2020 – also years after she not only supposedly served the defendant, but also both of these
20 recordings were done after the date these proof of service were signed making it appear to this
21 court that not only were they “licensed process servers”, which invalid at the time they executed
22 these proof of services, and declarations to this court, *but they further claimed to be working for*
a company that didn’t exist after 2018.

23 These proofs of service and the declarations were signed under penalty of perjury while
24 being made to appear to be executed by licensed process services who had a company named
25 Professional Process Service – none of which appears to be true at the time these documents
26 were signed. There appears to be no such verifiable person “Stephen Hutson”.

27 In speaking to Brianna in January of 2022, the current manager at the UPS store located
28 at 25A Crescent Drive #726, Pleasant Hill, CA 92423, it is their policy to not sign for, nor accept

1 any service of, legal documents such as the process server is claiming to have served upon
2 Laurie Deller back in 2013.

3 They are under new ownership as of 2018, and the manager when they took over was
4 named Dawn under the old ownership. Gabriella then spoke to the current owner who said they
5 inherited no papers indicating there was ever a manager there named Laurie.

6 Briana, and the current owner, did confirm however they never sign for any type of
7 service of legal documents, nor do they accept anything that's not provided them by either the
8 US Postal Service, FedEx, UPS, or a licensed messenger service. In other words, they wouldn't
9 have accepted anything just handed to them by some stranger coming in off the street like this
10 handing them documents as a matter of their standard operating policy.

11 Defendant informed this court he had closed his office five months before these process
12 servers claim he was served at his office address listed as Vina Venegas, at 1575 Treat Blvd.,
13 Suite #105, Walnut Creek, California, 94103.

14 However, this new paralegal noted that the defendant had not clarified he's never had a
15 secretary by that name either with the court in his previous objections.

16 So not only could he not have received personal service at this address because he no
17 longer had an office at this location on the date upon which it's claimed he was served there, but
18 he further had never had any secretary by this name ever.

19 Neither of the personal service declarations have either process server listed any physical
20 description of who was served, nor was any attempt made to verify they were over 18 years of
21 age by asking for an identification which could be referenced in their proof of service, nor could
22 they have been, nor were they asked their capacity either. Defendant has also attached a
23 declaration to this effect with this motion as well.

24 However, both of these proofs of service, one from Jeanne Kosta, and the other from
25 Stephen Hutson, claim to be licensed process servers, even giving their supposed license number,
26 along with the name of a company which doesn't exist anymore as a legal entity.

27 Process Server identities are questionable, and valid registration is questionable
28 according to Count Recorder Records for each. This is new information the defendant just
learned, is being submitted to this court so they may reconsider the motion

///

1 **III. REQUEST FOR ORAL TESTIMONY**

2 Oral testimony in support of motions is sometimes permitted; however, it is generally limited
3 to matters requiring credibility determinations. See Cal. Code Civ. Proc. § 2009; Reifler v.
4 Superior Ct., 39 Cal. App. 3d 479, 483–84 (1974).

5 Since this motion is going to issues of “credibility”, the defendant is requesting the option of
6 giving oral testimony with this motion.

7 **IV. LEGAL ARGUMENT**

8 **A. MOTION FOR RECONSIDERATION AND RELIEF FROM ORDER**

9 After the court has ruled on a motion, in limited circumstances, it may be appropriate for the
10 moving party to seek reconsideration. See Cal. Code Civ. Proc. § 1008(a), (b).

11 When a motion for reconsideration is made, it must be supported by an affidavit or
12 declaration that describes the prior motion, the judge and ruling on the prior motion, and what
13 new or different facts, circumstances, or law are claimed to warrant reconsideration. Cal. Code
Civ. Proc. § 1008(a), (b).

14 A party may seek relief from an unfavorable order on the grounds that it was taken through
15 the party (or attorney's) mistake, inadvertence, surprise, or excusable neglect. See Cal. Code Civ.
16 Proc. § 473(b).

17 In limited circumstances, and within 10 days after service of written notice of entry of the
18 order, (which the defendant received on January 6, 2022), a party affected by an order (whether
19 the moving party or any other) may request that the court reconsider it.

20 A motion for reconsideration may only be made based upon new or different facts,
21 circumstances, or law. Cal. Code Civ. Proc. § 1008(a). The motion must be accompanied by an
22 affidavit or declaration that provides:

- 23 • A description of the prior motion
24 • When and to what judge the prior motion was motion
25 • What orders or decisions were made
26 • What new or different facts, circumstances, or law are claimed
27 • A satisfactory explanation for the failure to produce the evidence of facts,
28 circumstances, or law prior to the ruling.

Both motions for reconsideration and renewed motions must be made to the same judge, if
available; otherwise, the motion must be made to the same court. See Williamson v. Mazda

1 Motor of America, Inc., 212 Cal. App. 4th 449, 455 (2012). Such motions must be noticed
2 motions, and, in addition to the notice and supporting evidence, include a memorandum that
3 details the new or different facts, circumstances, or law, and explains how they justify a revised
4 ruling. See Cal. Rules of Ct., Rule 3.1113(a), (b)

5 **B. LAW CONCERNING LICENSING OF PROCESS SERVERS**

6
7 The law governing process servers states, *“If an individual serves more than
8 10 papers a year they are required to be registered in the county which they reside
9 or have their principal place of business. Registration is statewide and applicants must be a
10 resident of the State of California for one year immediately preceding filing. There is no testing,
11 or education required. Every applicant is required to post a \$2,000 bond or cash deposit.
12 Licensed private investigators are exempt from the registration requirement, but are likely not
13 permitted to serve bank levies and similar documents without being registered per the statutory
14 language requiring that a registered process server serves those documents. [California
15 Business and Professions Code §22350 and §22353].”*

16 **C. LAW REGARDING PROCESS OF SERVICE FOR SUMMONS**

17 C.C.P. § 413.30 states, *“Where no provision is made in this chapter or other law for the
18 service of summons, the court in which the action is pending may direct that summons be served
19 in a manner which is reasonably calculated to give actual notice to the party to be served and
20 that proof of such service be made as prescribed by the court. (Added by Stats. 1969, Ch.
21 1610.)”*

22 C.C.P. Section 415.20 further states, *“If a copy of the summons and of the complaint
23 cannot with reasonable diligence be personally delivered to the person to be served as specified
24 in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the
25 summons and of the complaint at such person’s dwelling house, usual place of abode, usual
26 place of business, or usual mailing address other than a United States Postal Service post office
27 box, in the presence of a competent member of the household or **a person apparently in charge
28 thereof**, and by thereafter mailing a copy of the summons and of the complaint by first-class*

1 mail, postage prepaid to the person to be served at the place where a copy of the summons and
2 complaint were left. Service of a summons in this manner is deemed complete on the 10th day
3 after the mailing.”

4 C.C.P. § 415.30 states. “Service by mail. [describes mail service by sending a copy of
5 summons and complaint by first-class mail or airmail to the defendant, **together with 2 copies of**
6 **notice and acknowledgment form; service is complete on date defendant executes a**
7 **written acknowledgment; if form not returned within 20 days from mailing, defendant will**
8 **be liable for reasonable costs in being served by another permitted method].”**

9 C.C.P. Section 415.30(c) continues, “*Service of a summons pursuant to this section is*
10 *deemed complete on the date a written acknowledgement of receipt of summons is executed, if*
11 *such acknowledgement thereafter is returned to the sender.*”

12 D. RELIEF FROM DEFAULT JUDGMENT

13 If the clerk or court has entered default or default judgment against your client, you
14 should promptly determine whether you have grounds to move to set aside the default or default
15 judgment.

16 Under California law, there are several grounds that a party can use as a basis to
17 potentially set aside default and default judgment. Such grounds include: Mistake, Inadvertence,
18 Surprise, Excusable neglect, Extrinsic fraud or extrinsic mistake, Failure to provide actual notice
19 in time to defend, Default or default judgment is void, Failure to comply with consumer venue
20 statutes

21 2. Relief from Default or Default Judgment for Mistake, Inadvertence, Surprise, or
22 Excusable Neglect

23 Additionally, upon timely application, the court has discretion to grant relief from default
24 or judgment caused by reasonable mistakes or inadvertence, surprise, or neglect that is
25 excusable. Cal. Code Civ. Proc. § 473(b). Excusable acts or omissions are those of a reasonably
26 prudent person. Beeman v. Burling, 216 Cal. App. 3d 1586, 1602–03 (1990).

27 A. Mistake of Fact

28 The court may set aside a default or default judgment based on reasonable mistakes of fact.
See Cal. Code Civ. Proc. § 473(b). A mistake of fact occurs when a person understands the facts

1 to be other than they are. For example, courts have granted relief based on mistake of fact in the
2 following situations:

- 3
- 4 • The defendant or the defendant's attorney was mistaken as to the fact of service. See
5 Riskin v. Towers, 24 Cal. 2d 274, 278–79, (1944).
- 6 • The defendant or the defendant's attorney was mistaken as to the date of service. See,
7 e.g., Gore v. Witt, 149 Cal. App. 2d 681, 684–87 (1957).
- 8 • There was a misunderstanding between the defendant and the defendant's secretary. See
9 Benjamin v. Dalmo Mfg. Co., 31 Cal. 2d 523, 526–28 (1948).
- 10 • The defendant mistakenly believed that the papers served on him related to a lien claim
11 not requiring immediate attention, put them away for later attention, and then misplaced
12 them. Hodge Sheet Metal Prods. v. Palm Springs Riviera Hotel, 189 Cal. App. 2d 653,
13 656–58 (1961).

14 B. Surprise

15 A party may seek relief from a default or default judgment resulting from surprise. Cal.
16 Code Civ. Proc. § 473(b). "Surprise" means some harmful condition or situation that ordinary
17 prudence could not have guarded against and in which a party is unexpectedly placed, without
18 any fault or negligence of the party's own. See State Farm Fire & Cas. Co. v. Pietak, 90 Cal.
19 App. 4th 600, 611 (2001). Surprise is often coupled with excusable neglect as grounds for relief.
20 See, e.g., Lint v. Chisholm, 121 Cal. App. 3d 615, 620 (1981).

21 C. Excusable Neglect

22 A party may seek relief from a default or default judgment resulting from excusable
23 neglect. Cal. Code Civ. Proc. § 473(b). The statute expressly requires that the moving party show
24 that the neglect was excusable. See Transit Ads, Inc. v. Tanner Motor Livery, Ltd., 270 Cal.
25 App. 2d 275, 279 (1969).

26 To be excusable, the neglect must have been the act or omission of a reasonably prudent
27 person under the circumstances. See Beeman v. Burling, 216 Cal. App. 3d 1586, 1602–03
28 (1990). Excusable neglect may result from one act or omission, or a combination of factors. See
Contreras v. Blue Cross of Cal., 199 Cal. App. 3d 945, 951 (1988).

Examples of excusable neglect include:

- Misinformation. Neglect to act to prevent entry of a default or to seek relief from a default judgment may constitute excusable neglect when it was due to the defendant's reasonable reliance on misrepresentations made by the opposing party or attorney. See Nelson v. Southerland, 187 Cal. App. 2d 140, 141–42 (1960). The court may also grant relief when a party's failure to appear at trial was due to reliance on misinformation provided by a court officer. See Lynch v. De Boom, 26 Cal. App. 311, 314 (1915).

D. Relief from Default or Default Judgment/Other Grounds

As mentioned, in addition to the grounds for relief under Cal. Code Civ. Proc. § 473(b), a party may seek relief under several other grounds, including: Extrinsic fraud or extrinsic mistake, Failure to provide actual notice in time to defend. Default or default judgment is void.

i. Equitable Relief – Extrinsic Fraud or Extrinsic Mistake

A court has inherent, equitable power to set aside a default on the grounds of extrinsic fraud or extrinsic mistake. "Extrinsic fraud" generally involves the opposing party or attorney using inequitable conduct to cause the defendant to refrain from asserting its rights. Luxury Asset Lending, LLC v. Phila. Television Network, Inc., 56 Cal. App. 5th 894, 910–11 (2020); Aheroni v. Maxwell, 205 Cal. App. 3d 284, 291 (1988).

To obtain relief on the grounds of either extrinsic fraud or extrinsic mistake, the defendant must show: A meritorious defense, by submitting facts indicating that a different result would be reached if the moving party defends the action, a satisfactory excuse for failing to answer the complaint –and– diligence in seeking to set aside the default once discovered. Mechling v. Asbestos Defendants, 29 Cal. App. 5th 1241, 1247 (2018); Bae v. T.D. Serv. Co. of Ariz., 245 Cal. App. 4th 89, 98, 99 (2016).

Remedies under Cal. Code Civ. Proc. § 473(b) based on mistake, inadvertence, surprise, or excusable neglect, and a proceeding in equity for relief based on extrinsic fraud or extrinsic mistake are entirely distinct and cumulative.

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1 See Otani v. Kisling, 219 Cal. App. 2d 438, 442 (1963). A party seeking relief in equity must
2 normally make a stronger showing than would have been necessary for relief under Cal. Code
3 Civ. Proc. § 473(b). Kramer v. Traditional Escrow, Inc., 56 Cal. App. 5th 13, 29 (2020).

4 During the period that statutory relief is available, there is a strong public policy in favor of
5 granting relief and allowing the requesting party its day in court. Aheroni v. Maxwell, 205 Cal.
6 App. 3d 284, 291 (1988).

7
8 ii. *Failure to Provide Actual Notice in Time to Defend*

9 When service of the summons did not result in actual notice to a party in time to defend,
10 and a default or default judgment was entered against the party, the party may move to set aside
11 the default, and any resulting default judgment, and for leave to defend the action. Cal. Code
12 Civ. Proc. § 473.5(a).

13 "Actual notice" in this context means genuine knowledge of the litigant, not constructive
14 notice. Olvera v. Olvera, 232 Cal. App. 3d 32, 40 (1991).

15
16 iii. *Judgment is Void in Fact*

17 A judgment void on its face may be attacked at any time it presents itself. See, e.g.,
18 Manson, Iver & York v. Black, 176 Cal. App. 4th 36, 43 (2009). When seeking relief from a
19 judgment void in fact but not on its face, however, you must move for relief within a reasonable
20 time. A "reasonable time" is the statutory periods set forth in Cal. Code Civ. Proc. §§ 473 and
21 473.5. If the reason the judgment is void is due to improper service or nonservice of summons or
22 other required notice, the time limits for failure to provide actual notice (Cal. Code Civ. Proc. §
23 473.5), above, apply. Trackman v. Kenney, 187 Cal. App. 4th 175, 180 (2010). In all other cases,
24 the six-month limit in Cal. Code Civ. Proc. § 473(b) applies. See, e.g., Thompson v. Cook, 20
25 Cal. 2d 564, 569 (1942).

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OTION FOR RECONSIDERATION – PAGE 18

1 E. PROPOSED ANSWER ATTACHED IF REQUIRED

2 If the default arose from a failure to plead, the motion must be accompanied by a copy of
3 the answer or other pleading proposed to be filed. Cal. Code Civ. Proc. § 473(b). *Proposed*
4 *Answer is attached as Exhibit 1 already..*

5
6 F. ADDITIONAL RELIEF OFFERED

7 Additionally, whenever the court grants relief from a default or default judgment based
8 on any of the provisions of Cal. Code Civ. Proc. § 473, the court may also do any of the
9 following:

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11 • •Impose a penalty of no greater than \$1,000 on an offending attorney or party;
12 • •Direct that the offending attorney pay an amount no greater than \$1,000 to the State Bar
13 Client Security Fund;
14 • •Grant any other appropriate relief.

15 Apart from this, a trial court may order a party, the party's attorney, or both to pay any
16 reasonable expenses, including attorney's fees, incurred by another party as a result of actions or
17 tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. See
18 Cal. Code Civ. Proc. § 128.5(a); see Hearst v. Ferrante, 189 Cal. App. 3d 201, 204 (1987).

19 The movant can seek reconsideration, if the motion is made within 10 days after service of
20 entry of the order (Cal. Code Civ. Proc. § 1008(a); D.R.S. Trading Co., Inc. v. Barnes, 180 Cal.
21 App. 4th 815, 819–22 (2009)).

22 If the court feels this motion for reconsideration is untimely, then the court may renew the
23 original motion for relief submitted by this defendant, if the motion is made within Cal. Code
24 Civ. Proc. § 473(b)'s six-month deadline (Cal. Code Civ. Proc. § 1008(b); Even Zohar Constr. &
25 Remodeling, Inc. v. Bellaire Townhouses, LLC, 61 Cal. 4th 830, 844, 189 (2015))

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1. To set aside the default judgment.
2. To award reasonable costs for defending this motion so far;
3. To accept his Answer to this Complaint; and
4. Any and other relief as the court may deem just and fair.

Respectfully Submitted:

January 18, 2022 _____

1 default. However, when there was this turn around and my motion was denied, I did go out and
2 hire a paralegal, Gabriella Reyes, to review the Process Servers papers and filings.

3 She said she'd been trained to scrutinized "everything" on proofs of service, so she
4 started digging on whether or not the statements these two made were even true. Soon she was
5 coming to me showing me things such as there was no bond for Stephen Hutson, even though he
6 filed a certificate that he did have such a bond with the recorder's office. Never crossed my
7 mind anyone working with an attorney as a process server supposedly would attempt to deceive
8 the court, and also commit fraud by signing false documents under penalty of perjury.

9 I was not aware of the facts contained in this motion until very recently. I had to wait
10 until I received the entry of order, which I did on January 6, 2022, to start on the drafting of this
11 motion for reconsideration, so I have come back to this court in as timely of a manner as possible
12 to bring this new information that came to light to the court's attention. I believe if all of this
13 information presented was fraudulent, and an attempt to mislead this Court.

14 An Answer was served on the Plaintiffs, and attempted to file with the Court.

15 This motion is written to the best of my knowledge, information, and belief, formed after
16 a reasonable inquiry, is not being presented for any improper purpose, and it has a basis in law
17 and in fact.

18 I declare this information to be true and correct to the best of my knowledge under
19 penalty of perjury pursuant to the laws of the state of California.

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January 18, 2022
