

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 20 (Calendar will be heard in Department 8)  
Hon. Eric S. Geffon (Covering for Hon. Socrates Manoukian)**

191 North First Street, San Jose, CA 95113

Telephone: 408-882-2210

**DATE: March 21, 2024      TIME: 9:00 A.M.**

**To contest the ruling, call (408) 808-6856 before 4:00 P.M.**

Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling,  
in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

**NEW INFORMATION – PLEASE READ:** The court is now fully open for in-person hearings. The court **strongly prefers** in-person appearances for all contested law-and-motion matters. If you need to appear remotely for a law-and-motion hearing, please file and serve Form RA-010 at least two court days in advance. (Cal. Rules of Court, rule 3.672(g).) For all other hearings (e.g., case management conferences), Form RA-010 is not required to appear remotely. While parties and attorneys may appear either in person or remotely for CMCs, the court **strongly prefers** either in-person or video appearances rather than audio-only appearances.

**CourtCall is no longer available.** The court uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 8: [https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). Again, if you are appearing remotely, please log in using a computer or phone with video capability, and please turn your camera on when your case is called. Although MS Teams allows for audio-only appearances, they cause significant disruptions to court proceedings and should be used only as a last resort.

**Recording is prohibited:** As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

**Court reporters:** Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See [https://www.scscourt.org/general\\_info/court\\_reporters.shtml](https://www.scscourt.org/general_info/court_reporters.shtml).

**Troubleshooting Tentative Rulings**

If you do not see this week's tentative rulings, either they have not yet been posted, or your web browser cache (temporary internet files) is pulling up an older version. You may need to "REFRESH" your browser or "QUIT" and reopen it – or adjust your internet settings so you only see the current version of the web page. Otherwise, your browser may continue to show an older version of the web page even after the current tentative rulings have been posted.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	19CV357031	<i>Chun Lu v. Rabindra Chakraborty, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>It does not appear that the Order of Examination has been served, as there is no proof of service in the file. Plaintiff is invited to appear to discuss the matter. If Plaintiff does not appear, matter will be taken off calendar.</p>

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<u><a href="#">LINES 2-3</a></u>	21CV386176	<i>Thomas Lee v. Chris Martinelli, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Defendant brings a demurrer to the first, third, fourth, fifth, sixth and seventh causes of action. Additionally, Defendant moves to strike the punitive damages allegation and the request for attorney fees and costs.</p> <p>A demurrer was brought by Defendant in November 2023. Plaintiff did not file an opposition to that motion, and the court sustained the demurrer with leave to amend. Plaintiff filed a First Amended Complaint, to which the defendant now demurs.</p> <p>The motion was properly noticed and served on Plaintiff. Plaintiff has once again not filed any opposition to these motions. The failure to file an opposition can be considered consent to the granting of the motion. (Cal. Rule of Court, 8.54(c).)</p> <p>The demurrer is sustained and the motion to strike is GRANTED, WITHOUT leave to amend.</p> <p>Defendant is ordered to prepare a final order for court signature.</p>
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<a href="#">LINES 4-7</a>	23CV415803	<i>Antonio Pina v. James Lau, M.D.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.</p> <p><a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to May 2, 2024 at 9:00 a.m. in Department 20.</p>
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<u><a href="#">LINE 8</a></u>	21CV384799	<i>Shakiba Khoshbin v. Maria Mendoza, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff moves to continue the currently scheduled trial date to no earlier than September 3, 2024, and to extend all discovery deadlines to the new trial date. Defendant has filed an opposition.</p> <p>The court does note that an <i>ex parte</i> motion to continue the trial date was denied previously by Judge Manoukian. The basis of the ruling, however, was that no good cause had been shown to proceed with the motion on an <i>ex parte</i> basis. The court invited a noticed motion, supported by good cause, if the motion were to be renewed.</p> <p>Having reviewed the moving papers, opposition and reply, the court finds good cause exists and does order the trial continued to September 9, 2024. An MSC will be set for September 4, 2024. A trial assignment will be set for September 5, 2024 at 1:30 in Department 6. All trial related discovery deadlines and cut off dates are extended to the new trial date.</p>
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<a href="#">LINE 9</a>	22CV393277	<i>Second Osborn LLC v. Le Garden HB, LLC</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to May 2, 2024 at 9:00 a.m. in Department 20.</p>
<a href="#">LINE 10</a>	22CV402218	<i>Dolores Mattson v. Adi De La Zerda, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.sccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Attorney Paul Van Der Walde moves to withdraw as attorney of record for Plaintiff Dolores Mattson. The motion was properly served on Plaintiff Mattson.</p> <p>The motion to withdraw is GRANTED. The court will sign the proposed order provided.</p>

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<a href="#">LINE 11</a>	23CV414220	<i>Alma Carillo v. Jared Smith, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff moves to reinstate this to the docket following a dismissal order filed by this court based on Plaintiff's failure to appear at several previous hearings.</p> <p>The parties are ordered to appear to discuss this matter directly with the court.</p>
<a href="#">LINE 12</a>	23CV417261	<i>Bess Testlab, Inc. v. FPC Builders Inc., et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>See tentative decision, below.</p>

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<a href="#">LINE 13</a>	23CV421287	<i>Mark Zanette v. Covenant Care California LLC, et. al.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE.</p> <p><a href="https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>On the court's own motion, this matter is continued to May 2, 2024 at 9:00 a.m. in Department 20.</p>
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<a href="#">LINE 14</a>	23CV423165	<i>Cindy Hernandez v. Tesla Motors, Inc.</i>	<p>PLEASE NOTE: THE CALENDAR WILL BE CALLED IN DEPARTMENT 8. IF YOU PLAN TO ATTEND REMOTELY, PLEASE USE THE DEPT. 8 TEAMS LINK FROM THE COURT WEBSITE. <a href="https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml">https://www.scsccourt.org/general_info/ra_teams/video_hearings_teams.shtml</a></p> <p>Plaintiff seeks leave to file a Second Amended Complaint. Defendant does not object to the request, but without waiving their position concerning the motion to compel arbitration that is currently under submission.</p> <p>Plaintiff's Motion for Leave to Amend is GRANTED. Plaintiff is to file the Second Amended Complaint within 10 days of this order. The motion to compel arbitration is unaffected by this order.</p>
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**Line No.: 12**

**Case Name:** *Bess Testlab, Inc. v. FPC Builders and Full Power Properties*

**Case No.: 23CV417261**

## **INTRODUCTION**

Defendants FPC Builders Inc. and Full Power Properties (hereinafter “defendants”) move this court for an order setting aside a default entered on November 29, 2023. The lawsuit at issue was filed in June, 2023. A proof of service of was filed on July 6, 2023 indicating that Defendant’s Person Authorized to Accept Service was personally served on June 29, 2023.

At the time of the initial lawsuit, defendants were represented by the Zhong Lun Law Firm to handle its litigation. For reasons that are not explained in the moving papers, no responsive papers were filed by the Zhong Lu firm. A default was entered on November 29, 2023.

Current defense counsel was retained in December 2023 to replace the Zhong Lun firm. Shortly after being retained, defense counsel became aware that the default had been entered and began working to have the default set aside. Counsel contacted Plaintiff and began discussions about whether a stipulation could be entered into relieving defendant from the default. On January 5, 2024, Plaintiff’s counsel responded that they would not agree to such a stipulation.<sup>1</sup>

## **ANALYSIS**

Defendants motion includes declarations from Laurence Hughes, the authorized representative of the Defendants and Darius Chan, Defendant’s current counsel. Mr. Hughes states that it was his belief that prior counsel was handling the litigation here, as they were with other litigation the Defendants were involved in. (Declaration of Laurence Hughes, page 2, lines 3-5.) Mr. Chan states his firm was

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<sup>1</sup> One of the arguments put forward by Defendants is that the delayed response from Plaintiff prevented the Defendant from moving for relief from default sooner. The court is not concerned with the delay between Defendants initial overture to Plaintiff and Plaintiff’s ultimate response. It is clear to the court that current defense counsel acted with appropriate urgency to address this issue as soon as they became aware of it.

retained in December 2023 to handle the litigation in this matter and discovered upon reviewing the file that a default had been entered. (Declaration of Darius Chan, page 2 lines 10-16.) What is not included in the moving papers is any declaration from Defendants former counsel indicating why no responsive pleadings were filed.

As both counsel point out, Code of Civil Procedure section 473(b) authorizes the court to set aside a default upon showing that the default was entered due to “mistake, inadvertence, surprise, or excusable neglect.” The motion must be made “within a reasonable time, in no case exceeding six months” from the entry of default.

There is no question that this motion is made within a reasonable time of the entry of the default. It also appears clear to the court that current defense counsel has been diligent in their attempt to remedy the current situation. That, however, is not enough on its own to carry the burden the defense has in this motion. Defendants do not offer any evidence that prior counsel’s actions in not responding to the complaint was the result of “mistake, inadvertence or neglect.” It is the prior counsel’s “mistake, inadvertence or neglect” that would give the court evidence on which to make appropriate findings under CCP 473(b), and in the absence of a declaration from prior counsel, the court finds that the Defendant has not carried its burden.

### **CONCLUSION AND ORDER**

In the absence of any evidence presented in that regard, the court is compelled to find that the Defendant has failed to meet its burden under CCP §473(b). The motion to set aside the default is DENIED.

The court will prepare the final order.