

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

**Department 16**

**(Dept 16 is now hearing cases that were formerly in Dept 2)**

**Honorable Amber Rosen, Presiding**

Felicia Samoy, Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: 408.882.2270

**DATE: 09-12-24    TIME: 9 A.M.**

**All those intending to speak at the hearing are requested to appear in person or by video. Parties are asked NOT to appear by telephone only.**

**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.

**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

**TO CONTEST THE RULING: Before 4:00 p.m. today you must notify the:**

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court will call the cases of those who appear in person first. If you appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to Department 16.

[https://www.scscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml). You must use the current link.

**TO SET YOUR NEXT HEARING DATE:** You no longer need to file a blank notice of motion to obtain a hearing date. **You may make an online reservation to reserve a date** before you file your motion. If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Go to the Court's website at [www.scscourt.org](http://www.scscourt.org) to make the reservation.

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

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LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	20CV372924 Hearing: Order of Examination	BORTON PETRINI, LLP vs BRUCE KEISER	It does not appear that a proper proof of service has been filed. All parties are to appear in Department 16 at 9:00 AM, either in person or via TEAMS. If all parties appear, the Court will administer the oath and the examination will take place off line. If the debtor does not appear, the matter will be continued to allow proper notice. If there is no appearance by the moving party, the matter will be ordered off calendar.
<a href="#">LINE 2</a>	23CV410539 Hearing: Demurrer	Shahryar Rokni vs Los Gatos-Saratoga Union High School District	Plaintiff's unopposed demurrer to the cross-complaint of defendant Flavio Cesar Barney-Santiago is SUSTAINED with 20 days leave to amend. The failure to file a written opposition "creates an inference that the motion or demurrer is meritorious." <i>Sexton v. Superior Court</i> (1997) 58 Cal.App.4th 1403, 1410. Plaintiff is ordered to appear at the hearing. Plaintiff shall submit the final order.

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<a href="#">LINE 3</a>	22CV408365 Motion: Compel	Jane Roe et al vs Eastside Church of Christ et al	Plaintiff moves for a supplemental response to FI 4.1. Defendant has indicated it will provide a supplemental response once it has the answer from the insurance carrier's counsel. Parties are ordered to the hearing and Defendant will be required to provide a date by which the coverage's reconstruction will be done. The Court will then set a date by which the supplemental response must be given.
<a href="#">LINE 4</a>	22CV408365 Conference: Trial Setting	Jane Roe et al vs Eastside Church of Christ et al	
<a href="#">LINE 5</a>	19CV345772 Motion: Reconsider	Thien Tran vs Tam Nguyen et al	There does not appear to be a proof of service for the motion for reconsideration and Defendant claims not to have received notice. Parties are ordered to appear for the hearing. If Plaintiff fails to attend, the matter will be deemed withdrawn and the matter taken off calendar.
<a href="#">LINE 6</a>	22CV396499 Motion: Set Aside	Guaranty Finance Management, LLC vs Laurance Spitters et al	See Tentative Ruling. GAL shall submit the final order.
<a href="#">LINE 7</a>	24CV438884 Hearing: Confirm Arbitration Award	V2Solutions, Inc. vs MIADVG, LLC	The matter is off calendar based on the parties' stipulation. The Court will sign the submitted judgment.

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**The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.)**

<a href="#">LINE 8</a>	23CV410152 Hearing: Motion Summary Judgment	Gary Bozzo vs Msalam Sara, MD et al	The matter is off calendar, as moving party Defendant BICH-HA LE NGUYEN has been dismissed.
<a href="#">LINE 9</a>			
<a href="#">LINE 10</a>			
<a href="#">LINE 11</a>			
<a href="#">LINE 12</a>			
<a href="#">LINE 13</a>			
<a href="#">LINE 14</a>			
<a href="#">LINE 15</a>			
<a href="#">LINE 16</a>			
<a href="#">LINE 17</a>			

## **Calendar Line 6**

**Case Name:** *Guaranty Finance Management LLC v. Laurence Louis Spitters et al.*

**Case No.:** 22CV396499

### **I. Background**

Plaintiff Guaranty Finance Management, LLC (“Plaintiff”) filed its breach of contract action on March 30, 2022 against defendants Laurence Lous Spitters (“Spitters”), individually and as a trustee of: LLS Charitable Remainder Unitrust #1, LLS Charitable Remainder Unitrust #2, LLS Charitable Remainder Unitrust #3, and Laurence L. Spitters Revocable Trust; and LS Foundation (collectively, “Defendants”).

On November 16, 2022, Plaintiff filed proofs of service indicating it had served Defendants by substitute service on September 30, 2022. At the time of service, Spitter was 96 years old and had recently suffered a stroke and experienced cognitive decline since 2020. (Motion, p. 7: 13-15.)

On December 7, 2022, Plaintiff filed a request for entry of default against Defendants but the request was denied. On July 12, 2023, Plaintiff refiled its request and then obtained default that same day. On both dates, Spitter was self-represented.

On April 22, 2022, counsel for Spitters’ daughter, Nancy Eaton, provided notice to Plaintiff that an ex parte application for appointment of Darren Wallace (“GAL Wallace”) as Guardian Ad Litem was being filed. On April 23, 2024, Plaintiff served Spitters its request for entry of default judgment. On April 29, 2024, the Court issued an order confirming Spitters lacked capacity to participate in the lawsuit and appointed GAL Wallace as his guardian ad litem. Thereafter, GAL Wallace retained counsel who reached out to Plaintiff’s counsel seeking to stay Plaintiff’s entry of judgment and a stipulation to set aside default. Plaintiff’s counsel indicated that Plaintiff was not willing to set aside default.

On May 6, 2024 GAL Wallace filed an ex parte application seeking a stay on Plaintiff’s request for entry of judgment and an order setting a briefing schedule on a motion to set aside default. On May 9, 2024, the Court granted, in part, the ex parte application and stayed the request for entry of default subject to a decision on a motion to set aside default. (See Jackson Decl., Ex. J.)

On May 23, 2024, GAL Wallace filed a motion to set aside entry of default, currently before the Court. Plaintiff opposes the motion and GAL Wallace has filed a reply.

### **II. GAL Wallace’s Request for Judicial Notice**

In support of his motion, GAL Wallace requests judicial notice of an excerpt from the Articles of Incorporation for LS Foundation filed with the California Secretary of State. The request is DENIED. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not “necessary, helpful, or relevant”].)

### III. Motion to Set Aside Default Judgment

GAL Wallace asks the Court to set aside default on the following grounds: 1) as void for improper service pursuant to Code of Civil Procedure sections 585 and 473, subdivision (d); or (2) as invalid for (i) excusable neglect or mistake pursuant to Code of Civil Procedure section 473, subdivision (b) or (ii) lack of actual notice to Mr. Spitters per Code of Civil Procedure section 473.5. (See Motion, p. 7:4-8.) The Court will address the second argument first.

#### a. Legal Standard on Motion to Set Aside Default

Code of Civil Procedure section 473, subdivision (b) provides:

The court may, upon any terms as may be just, 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. Application for this relief . . . shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

...

Notwithstanding any other requirements of this section, the court shall, 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, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment. . . The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties.

(Code Civ. Proc. § 473, subd. (b).)

Code of Civil Procedure section 473 is specific in language and narrow in scope, authorizing a court only to relieve a party from a default taken through mistake, inadvertence, surprise or excusable neglect. (*In re Marriage of Adkins* (1982) 137 Cal.App.3d 68.) To obtain relief under this section, the moving party must show good cause for that relief by proving the existence of a satisfactory excuse for the occurrence of that mistake. (*Dill v. Berquist Construction Co.* (1994), 24 Cal.App.4th 1426 (*Dill*).)

GAL Wallace contends that Spitters' medical conditions prevented him from being competent to receive or to be able to comprehend or understand the significance of service of process. (Motion, p. 14:25-27.) GAL Wallace relies on *Olivera v. Grace* (1942) 19 Cal.2d 570, 577 (*Olivera*), which the Court finds persuasive here.

In *Olivera*, the plaintiff brought suit against the defendant where the defendant had sought a default judgment against plaintiff's grandmother in an underlying action despite knowing that the grandmother lacked capacity at the time. The defendant argued that the grandmother had not been judicially declared incompetent at the time of the former action. The California Supreme Court explained that "[i]ncompetency which, as in the present case, is alleged to render a defendant wholly devoid of understanding and incapable of transacting business of any nature is a condition which exists independently of a judicial determination of

fact. . . . If the plaintiff knows of the defendant's incompetency . . . and, to prevent a true adversary hearing, proceeds to a default judgment by taking advantage of defendant's condition, [plaintiff's] conduct constitutes a fraud upon the court as well as upon the incompetent defendant." (*Olivera, supra*, 19 Cal.2d at p. 577.) The result is the same, however, where "the plaintiff's ignorance of defendant's legal disability prevented a true adversary hearing." (*Id.* at p. 577; see also *Briggs v. Briggs* (1958) 160 Cal.App.2d 312, 319 [The statutes regarding appointment of guardians *ad litem* were enacted to protect minors and insane and incompetent persons – not preclude them from their legal rights. [Citation]. A default judgment taken against an incompetent person not represented in the action by a general guardian or a guardian *ad litem* should be set aside when properly disaffirmed."].)

Additionally, the right to relief from default "has also been extended to cases involving extrinsic mistake. . . . Extrinsic mistake is found when a party becomes incompetent but no guardian *ad litem* is appointed." (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 471 [superseded by statute on other grounds]; see also *Dei Tos v. Dei Tos* (1951) 105 Cal.App.2d 81, 85.) Further, as GAL Wallace argues, courts favor disposing of cases on their merits, and the only prejudice to Plaintiff here is that it will now have to try its case on the merits. (See Motion, p. 15:23-27, citing *Rogalski v. Nabers Cadillac* (1992) 11 Cal.App.4th 816, 822; see also *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806 [courts have a policy favoring disposition of cases on the merits rather than on procedural grounds].)

In this case, Spitters is now 98 years old, he has suffered a stroke, and is in cognitive decline. (See Eaton Decl., ¶¶ 4-6.) This Court (Hon. Rosen) determined that Spitters lacked capacity to participate in this lawsuit and appointed GAL Wallace as his guardian *ad litem*. (See Wallace Decl., ¶ 6, Ex. C; see also *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 97 [“trial court has discretion to vacate the entry of a default . . . , this discretion may be exercised only after the party seeking relief has shown that there is a proper ground for relief, and that the party has raised that ground in a procedurally proper manner”].) The Court is persuaded that GAL Wallace has shown there is a proper ground for relief and that he must be given an opportunity to address Spitters' defenses and counterclaims on the merits given Spitters' incapacity.

In opposition, Plaintiff's main argument is that GAL Wallace has not supported his motion with "***any evidence whatsoever***[" (Opposition, p. 2:6-7 [emphasis original].) Specifically, that there is no evidence Spitters was incapacitated at the time of service. However, Spitters' daughter indicates in her declaration that after his stroke, Spitters was only discharged on the condition that he hire 24/7 professional care and that he was not able to care for himself and his condition has continuously declined since 2020. (Eaton Decl., ¶ 5.) Plaintiff asserts that it was in communication with Spitters after his stroke occurred, signifying that he was not incapacitated. However, the Court is not persuaded that because Plaintiff or Plaintiff's counsel were in communication with Spitters it means he was of sound mind.

Accordingly, the motion to set aside default judgment is GRANTED.

The Court declines to rule on Plaintiff's objections to the evidence submitted in support of its opposition as the Court did not rely on the evidence objected to. Additionally, given the above ruling, the Court finds it unnecessary to reach the argument regarding service.

GAL Wallace shall prepare the final order.