SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: September 24, 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.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 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 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

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.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	2009-1-CV-157985	Unifund CCR Partners v. Michael D. Brass	Order of examination: parties to appear.
LINE 2	24CV428585	Christopher Tripp et al. v. Norman P. Woods, M.D. et al.	OFF CALENDAR
LINE 3	24CV428585	Christopher Tripp et al. v. Norman P. Woods, M.D. et al.	OFF CALENDAR
LINE 4	23CV426549	Wells Fargo Bank, N.A. v. Chad Wikstrom	In light of the stipulated judgment, this matter is now OFF CALENDAR.
LINE 5	24CV432282	Bank of America, N.A. v. Kayla Jenae Ortega-Correa	Motion for RFAs to be deemed admitted: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare proposed order.
LINE 6	2014-1-CV-260711	Portfolio Recovery Associates, LLC v. Alexander Macalma	Claim of exemption: judgment debtor's claim is DENIED. The court agrees with judgment creditor that the judgment debtor has not identified any exempt funds in his claim. The court orders the funds currently being held to be released to the judgment creditor.
LINE 7	21CV378191	Fernando Delgado v. Maria Teresa Delgado	Click on LINE 7 or scroll down for ruling.
LINE 8	22CV399413	Li Juan Liu v. Kenneth To	Click on LINE 8 or scroll down for ruling.
LINE 9	22CV409146	Hassan Abpikar v. Sasan Momeni et al.	Click on LINE 9 or scroll down for ruling.
LINE 10	23CV417262	MB Millennium Builders, Inc. v. Saila Talagadadeevi et al.	Click on LINE 10 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 11	24CV436282	Arthur Flores v. Erica Nicole Flores	Motion to be relieved as counsel: parties to appear.

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Calendar Line 7
Case Name: *Fernando Delgado v. Maria Teresa Delgado*
Case No.: 21CV378191

Plaintiff Fernando Delgado ("Fernando") brings this motion to enforce a settlement agreement against his mother, defendant Maria Teresa Delgado ("Maria"). Maria argues that the motion is unsupported by any cognizable evidence, and the court must necessarily agree. The motion refers to a supporting declaration of plaintiff's counsel, but no declaration has actually been submitted. There is no evidence submitted under oath. The motion itself attaches a hearing transcript and settlement agreement, but these documents are not sufficiently authenticated for the court to make a ruling on this motion.

At the same time, the court notes that there does not appear to be a genuine dispute regarding the underlying facts of this case. Maria does not dispute that she entered into a settlement agreement with Fernando, confirmed in open court and with the assistance of counsel. The primary issue appears to be a legal one: is the disputed provision of the settlement agreement an unenforceable "penalty"? The court is somewhat skeptical of Maria's argument that the disputed provision—*i.e.*, that if Maria did not assume a loan obligation from Fernando by a certain date (in a little over nine months), she would have to sell the property at issue and pay an additional $50,000 to Fernando—is unenforceable. The court reserves judgment on this question, as Fernando's briefing does not even directly address it, but the court remains skeptical.

Accordingly, the court DENIES the present motion WITHOUT prejudice to it being brought with a sufficient evidentiary foundation. The court urges the parties to make a greater effort to meet and confer to try reach a final resolution on this dispute without resort to further motion practice, based on the court's preliminary comments herein. If necessary, the court will consider a further motion, but it would be better for the parties to try to work it out. The court DENIES Maria's request for the attorney's fees and costs incurred in opposing this motion.

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Calendar Line 8
Case Name: *Li Juan Liu v. Kenneth To*
Case No.: 22CV399413

Defendant Kenneth To has filed this motion to set aside a default, based on "mistake, inadvertence, surprise, or excusable neglect" under Code of Civil Procedure section 473, subdivision (b). The clerk's office of the court previously entered a default on May 2, 2023, as a result of To's failure to file a responsive pleading. No default judgment has been entered yet, as plaintiff Li Juan Liu has not yet filed a request for entry of default judgment.

The court grants the motion to set aside the default.

This motion was original scheduled to be heard on August 1, 2024, but the court continued it because there was no proof of service on Liu, and the court wanted to ensure that Liu had an adequate opportunity to file an opposition brief. At the hearing on August 1, 2024, at which both parties were present (along with a Mandarin Chinese interpreter for Liu), Liu requested more time to respond to the motion. The court decided to reset the hearing for September 24, 2024, with an opposition brief due on September 11, 2024.

Later that same day (August 1, 2024), the court received an ex parte application from Liu "to dismiss and deny defendant's invalid and defective motion to set aside default." This application consisted of eight pages of text and 11 pages of exhibits. On August 2, 2024, the court denied the application, stating that if Liu wished to oppose the motion on the merits, "she should file an opposition brief, not an ex parte application."

On September 11, 2024, the due date for Liu's opposition to this motion, the court received another ex parte application from Liu, requesting more time to respond to the motion—until November 2024—which would necessitate a continuance of the September 24, 2024 hearing. This application consisted of 11 pages of text plus 15 pages of exhibits. On the same day (September 11, 2024), the court denied the application, finding that the request was unreasonable. (See September 11, 2024 Order, p. 2:3-20.) Nevertheless, the court further extended Liu's time to file an opposition to September 16, 2024.

As of September 23, 2024, the eve of the hearing, the court still has not received any substantive opposition to this motion. The court finds that To has shown that his previous failure to file a responsive pleading was the product of "mistake" and "excusable neglect," and so he is entitled to be relieved from the default.

The motion is GRANTED, and the default is set aside. Defendant To must file his response to the complaint by no later than October 14, 2024.

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Calendar Line 9
Case Name: *Hassan Abpikar v. Sasan Momeni et al.*
Case No.: 22CV409146

This is a motion by defendants Sasan Momeni, Saman Momeni, and Siamack Momeni to set aside the court's order of October 27, 2023 allowing for substitute service on defendants Simin Momeni and Ali Soleiman. The previous order was based on an ex parte application by plaintiff Hassan Abpikar, which alleged that Simin Momeni resided with Sasan Momeni and that Ali Soleiman worked with Sasan Momeni. Defendants now argue that neither of these facts is true, and that they did not have a sufficient opportunity to oppose the ex parte application before the court entered its order.

Although the court continues to believe that Simin Momeni and Ali Soleiman appear to be evading service, the court ultimately agrees with defendants that there was not a sufficient legal or factual basis to allow for substitute service in this instance. Abpikar opposes the motion by arguing that it is moot as to Simin Momeni, because after it was filed, the summons and complaint were personally served on her on July 12, 2024. In addition, Abpikar argues that he is "in the process of locating and serving the 5th Defendant, Ali Masjed Soleiman, by another Process Server." (Opposition, p. 2.)[1] While these actions by Abpikar may well have the effect of rendering the issue of service moot, they still have no bearing on the validity of the court's October 27, 2023 order allowing for substitute service. In fact, these subsequent actions belie the notion that substitute service was proper to begin with.

Accordingly, the court GRANTS the motion. The court notes that there is now a proof of service in the file as to Simin Momeni, as of July 22, 2024. Abpikar should move forward with proper service on any remaining defendants forthwith.

It is so ordered.

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[1] There are no line numbers on Abpikar's opposition, and so the court can only cite page numbers.

Calendar Line 10
Case Name: *MB Millennium Builders, Inc. v. Saila Talagadadeevi et al.*
Case No.: 23CV417262

Plaintiff and petitioner MB Millennium Builders, Inc. ("Petitioner") seeks to vacate an arbitration award, based on the arbitrator's alleged failure to disclose an engagement with counsel for defendants and respondents Saila Talagadadeevi and Kishore Kagaolanu ("Respondents") in another case. The court finds the petition to be meritless and DENIES it.

Petitioner misleadingly argues that the arbitrator, Donald Sullivan, failed to disclose that he had taken on a "new engagement" involving respondent's counsel while this arbitration was pending. (Memorandum, p. 9:6-10.) Petitioner also characterizes this "new engagement" as a new "offer of employment" by respondent's counsel to Sullivan. (*Id.* at p. 10:5-28.) In reality, this engagement was a mediation in another case that both Respondents' counsel and Sullivan had previously disclosed to Petitioner at the outset of the arbitration.[2] The mediation in that other case occurred on December 8, 2023, but the parties to that case apparently determined that they were not ready to settle: "It was decided the session would be prematurely adjourned and then completed on a different day, after the parties could complete specified tasks." (Bowne Decl., ¶ 10.) Petitioner now argues that by adjourning the mediation and agreeing to try again at a later date, Sullivan necessarily took on a "new engagement" and new "offer of employment," which he was required to disclose again in this case.

The court finds Petitioner's contentions to be singularly unpersuasive. First, Petitioner presents no evidence to support the notion that the continuation of the mediation in the other case constituted a "new engagement." Was there a *new engagement letter* between the parties and Sullivan, with *new and materially different terms*? If so, Petitioner might arguably have a point, but it offers no evidence—other than its own speculation and supposition—to support such an allegation here. By contrast, if the parties and Sullivan simply agreed to continue the existing arrangement in that other case, then there is no factual basis for arguing that there was a "new" engagement or "new" employment. Second, Petitioner tries to find significance in the fact that the parties in that other case intended the mediation to be a "one and done" session. (Memorandum, pp. 8:26-9:5.) Even if that is true, there was obviously no guarantee that the mediation would necessarily conclude in a single session. Parties in litigation often cannot predict the outcome of a mediation before it happens, and it is exceedingly common for parties (and a mediator) to decide that a mediation is premature and needs to be continued, whether for additional discovery, additional investigation, or other reasons. Petitioner's briefs try to present what happened in that other case as somehow surprising or unusual, but it is not surprising at all to anyone who engages in ADR on a regular basis.[3] Third, and most important of all, Petitioner completely fails to explain how the circumstances of that other case would "cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator

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[2] According to Respondents' counsel, Jonathan Bowne, Bowne disclosed the mediation to Petitioner's counsel, Stephanie Rocha, prior to their contacting the arbitrator about this case. After the parties contacted Sullivan, Sullivan disclosed it, as well. At no time did Rocha raise any concerns regarding the pre-existing mediation in the other case. (Declaration of Jonathan M. Bowne, ¶¶ 2-8.)

[3] Respondents object to Petitioner's reply brief, arguing that there is no provision for a reply brief on a petition to vacate. The court overrules the objection. Although the court has read the reply, it does not change the outcome here.

would be able to be impartial. (Code Civ. Proc., § 1281.9, subd. (a).)[4] Petitioner never objected when it was first made aware of the mediation in that other case; why would Petitioner suddenly have an objection to the mediation in that case being continued to a later date? Petitioner does not provide any plausible explanation whatsoever, and the court does not discern how anyone could "reasonably entertain a doubt" about Sullivan's ability to be impartial in this case simply because the mediation in the other case was taking longer than anyone originally expected. Petitioner's claim is nonsensical.

Petitioner makes additional arguments that are even less meritorious. It argues that Respondents' counsel and Sullivan engaged in "ex parte" communications, because they had conversations *in the course of that other case* about counsel's illness and counsel's prior vocation as a cheesemaker, to which Petitioner's counsel was not privy. These were not an ex parte communications. Petitioner's counsel cannot reasonably expect to have been a participant in communications between the parties and the mediator in a different case, and there is no evidence that Respondents' counsel, Sullivan, and opposing counsel *in the other case* talked about *this* case; there is no reason to believe that they would ever have had any occasion to talk about this case. (Bowne Decl., ¶¶ 10, 13.) Petitioner's argument betrays a fundamental lack of understanding of what constitutes an ex parte communication.

In addition, Petitioner alleges that Respondents' counsel and Sullivan engaged in ex parte communications when Respondents' counsel emailed a copy of their arbitration brief to Sullivan a day before forwarding that same email to Petitioner's counsel. This does not constitute an actionable ex parte communication because Petitioner received the same communication that the arbitrator received from Respondent, albeit a day late. Moreover, this alleged transgression has nothing to do with the arbitrator's role in mediating the other case, it has nothing to do with anything the arbitrator did in this case—at best, it is a complaint about a *de minimis* violation by Respondents' counsel, not the arbitrator—and it is not a recognized basis for vacating an arbitration award under Code of Civil Procedure section 1286.2.

The petition is denied.

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[4] Respondents repeatedly mis-cite this statute as "Code of Civil Procedure § 1286.9(a)"—so often that the court feels compelled to call it out. (E.g., Opposition, pp. 7:2, 7:10-11, 9:23-24.)