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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ARASH SHAMSIAN et al.,

Plaintiffs and Appellants,

v.

WILLIAM A. BUTCHER
COMPANY, INC. et al.,

Defendants and Respondents.

B284443

(Los Angeles County
Super. Ct. No. BC608711)

APPEAL from an order of the Superior Court of Los Angeles County, Dalila C. Lyons, Judge. Reversed and remanded with directions.

Medvei Law Group and Sebastian M. Medvei for Plaintiffs and Appellants.

No appearance for Defendants and Respondents.

INTRODUCTION

Arash Shamsian and his wife Negar Omidakhsh filed this action alleging tort and other causes of action against two immigration consultants, Allison Lord and William A. Butcher, and their consulting agency, William A. Butcher Company, Inc., doing business as The Lord's Immigration Consulting Agency, arising out of failed efforts to obtain a green card for Omidakhsh. After the defendants failed to respond to the complaint, Shamsian and Omidakhsh tried three times to obtain a default judgment. The court denied each request, finding they presented insufficient evidence of damages.

Shamsian and Omidakhsh appeal from the court's order denying their third request for a default judgment and dismissing their complaint under rule 3.110(h) of the California Rules of Court for failing to timely obtain a default judgment.¹ Because Shamsian and Omidakhsh proved they were entitled to damages as well as civil penalties under the Immigration Consultants Act, Business & Professions Code section 22440 et seq. (the Act), and because the trial court dismissed the complaint under rule 3.110 without first issuing an order to show cause, we reverse the order of dismissal and remand with directions for the trial court to grant the request for default judgment and award appropriate damages, penalties, and other relief.

¹ Undesignated references to rules are to the California Rules of Court.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Lord and Butcher Misrepresent Their Abilities and Expertise and Fail To Assist Omidakhsh in Obtaining a Green Card*

According to the complaint and the declarations of Shamsian and Omidakhsh (see *Garibotti v. Hinkle* (2015) 243 Cal.App.4th 470, 474, fn. 2 “[w]e take most of the facts from the allegations of [the plaintiff’s] complaint because [the defendant’s] default “confess[es]” the material facts alleged in that pleading”)), in July 2014 Omidakhsh, a citizen of Canada living in the United States on a student visa, and Shamsian were expecting their first child. Omidakhsh had received a doctoral fellowship that would have covered tuition, fees, and medical insurance, and paid her an annual stipend of \$40,000 for up to three years. In order to receive the stipend, however, Omidakhsh had to be a citizen or lawful permanent resident of the United States. She was eligible for lawful permanent resident status because of her marriage to Shamsian.

Shamsian and Omidakhsh sought assistance and found the defendants’ website. They spoke with Lord by telephone and told her time was of the essence because of the fellowship. Lord made multiple misrepresentations, including that she was an immigration law expert who “possessed secret information” and had government connections that allowed her to “procure special benefits.” Lord said she would secure lawful permanent resident status and a green card for Omidakhsh within four to six months. During an in-person meeting, Lord and Butcher “continued to

hold themselves out as ‘experts’ in immigration law.”² Shamsian and Omidakhsh hired the defendants and paid them \$2,995.

Lord, Butcher, and the consulting agency submitted an application for a green card without first giving Omidakhsh or Shamsian an opportunity to review it. Two months later, the immigration authorities rejected the application. Shamsian and Omidakhsh were “incredibly distressed,” but Lord said the rejection was “not a big deal” and was due to an assistant’s error that Lord would correct. Lord said the application was still “on track.”

The relationship deteriorated. Lord avoided phone calls from Shamsian and Omidakhsh and, when she did speak with them, was uncooperative, yelled at them, and threatened to abandon the case. Shamsian had several heated exchanges with Lord. After hiring an immigration attorney, Shamsian and Omidakhsh discovered Lord had “incorrectly prepared” the application, including misrepresenting multiple facts. The immigration attorney told Omidakhsh the misrepresentations in the application Lord filed would cause, at best, delay and, at worst, denial and deportation for lying to immigration officials.

As a result of Lord’s misrepresentations to immigration authorities, Omidakhsh received notice to appear for an immigration interview in Dubai, where she was born but had no

² At the request of Lord and Butcher, Shamsian and Omidakhsh each signed three blank sheets of paper. Lord and Butcher said they would use replicas of the signatures on documents submitted to the immigration authorities to save Shamsian and Omidakhsh from repeated trips to the consulting agency’s office. Shamsian and Omidakhsh later worried the consultants would use their signatures for an illegal purpose.

ties. Omidakhsh did not get her green card until August 2016, more than two years after she first contacted the defendants, after she had retained the immigration attorney.

B. *Shamsian and Omidakhsh Suffer Damages*

After the immigration authorities rejected her application, and as a result of the ensuing difficulties with Lord, Omidakhsh felt “particularly vulnerable” and needed the support of her family. Because her immigration status was unsettled, however, she could not travel to Canada to be with them. She was also unable to attend her best friend’s wedding, and the friend never forgave her, which deeply troubled Omidakhsh. Omidakhsh experienced stress, anxiety, depression and sleeplessness, which led to various serious medical problems, including hypertension, preeclampsia, and the premature birth of her first child. Omidakhsh’s medical condition, coupled with her ongoing stress, also created problems with her second pregnancy. Her amniotic fluid was “dangerously low,” and her doctor recommended a cesarean section for her health and the health of the baby. She was unable to return to school and obtained a medical leave of absence.

Omidakhsh and Shamsian’s financial condition became precarious, and the manager of their student housing threatened to evict them. The “immigration department” threatened to deport Omidakhsh if she did not register for classes, and because she was “technically not a student,” she was “technically not qualified to remain in the [United States] on [her] student visa. . . .” She stated, “I can’t begin to describe the stress and emotional weight I was carrying at this time when I was almost evicted from my home and deported out of the country.” She

continued to worry about her immigration status even after she received her green card and she was anxious whenever she left the country.

The defendants' actions also impacted Shamsian. He witnessed his wife's suffering, worried about the health of his wife and their baby, and became ill. He experienced anxiety, grief, and "constant daily stress," and he feared the authorities would separate his family. He argued with Omidakhsh, and their marriage became strained. He was distracted at work and gave up an opportunity to advance his career.

C. *Shamsian and Omidakhsh File This Action*

Shamsian and Omidakhsh sued Lord, Butcher, and William A. Butcher Company, Inc. on February 1, 2016, and served them six days later. Shamsian and Omidakhsh alleged causes of action for intentional and negligent deceit, intentional and negligent interference with prospective advantage, negligence, intentional infliction of emotional distress, unfair competition, breach of warranty, and nineteen violations of the Act.³ Shamsian and Omidakhsh also alleged the defendants

³ The alleged violations were (1) "[n]ot practicing in conformity with the [Act]"; (2) "[a]dvising clients how to answer on immigration forms"; (3) "[h]olding out as an attorney to the public"; (4) "[p]roviding legal advice"; (5) "[f]ailing to submit a background check to the Secretary of State, as to [d]efendant Butcher"; (6) "[f]ailing to provide a written contract meeting the requirements of the [Act]"; (7) "[f]ailing to provide receipts and accountings in conformity with the [Act]"; (8) "[f]ailing to conspicuously display the notices required under the [Act]"; (9) "[f]ailing to provide written disclosures required under the [Act]"; (10) "[f]ailing to conspicuously state in advertisements

were co-conspirators and agents of each other. Shamsian and Omidakhsh sought economic and noneconomic damages, declaratory and injunctive relief, civil penalties for violations of the Act, costs, reasonable attorneys' fees under the Act, and punitive damages. The prayer for relief also requested treble damages and interest. The complaint did not specify the amounts of damages Shamsian and Omidakhsh sought.

D. *Shamsian and Omidakhsh Serve Statements of Damages*

On April 13, 2016 Shamsian and Omidakhsh served the defendants with statements of damages.⁴ Shamsian and

that [de]fendants are not attorneys"; (11) "[t]ranslating from English to another language the words proscribed by the [Act], including, without limitation, the words 'notary,' 'licensed,' and 'attorney'; (12) "[f]ailing to submit to the Department of Justice fingerprint images for the purposes of a background check"; (13) "[f]ailing to maintain a client trust account as required under the [Act]"; (14) "[d]emanding advance payment for certain services as proscribed by the [Act]"; (15) "[f]ailing to maintain a bond of \$100,000, as to [d]efendant Consulting Agency, Butcher, and DOE 1 (Ms. Lord's assistant); (16) "[a]dvertising as an immigration consultant without maintaining the above-mentioned bond"; (17) "[m]aking false and misleading statements to a client while providing services to the client"; (18) "[m]aking oral guaranties and promises to a client, and/or written guarantees and promises not based in any supportable fact"; and (19) "[m]aking a statement that [d]efendants can secure special favors from government officials for clients."

⁴ Statements of damages are used only in personal injury or wrongful death actions. (Code Civ. Proc., § 425.11, subd. (b).) A statement of damages must be served on a defendant before the

Omidakhsh each sought \$2 million in civil penalties under the Act. Omidakhsh sought \$3 million in noneconomic damages, \$50,000 in past medical expenses, \$50,000 in future medical expenses, \$120,000 in lost earnings, and \$2 million in loss of future earning capacity. Shamsian sought \$2 million in noneconomic damages. Both plaintiffs asked for \$10 million in punitive damages.

E. *Lord, Butcher, and William A. Butcher Company, Inc.*
Default

None of the defendants answered the complaint. On September 2, 2016 Shamsian and Omidakhsh filed requests to enter the defaults of all three defendants. The clerk entered the defaults of Lord and Butcher the same day, but rejected the request to enter the default of the agency. On February 8, 2017 the clerk entered a renewed request to enter the consulting agency's default.⁵

plaintiff may seek a defendant's default. (*Id.*, § 425.11, subd. (c).) Damages recoverable by default judgment "cannot exceed that demanded in the complaint, [or] in the statement [of damages] required by [Code of Civil Procedure] Section 425.11." (*Id.*, § 580, subd. (a).) This action is for personal injury within the meaning of Code of Civil Procedure section 425.11. (See *Schwab v. Rondel Homes, Inc.* (1991) 53 Cal.3d 428, 432 [handicap discrimination action is for personal injury where emotional distress claims "lie at the heart" of the action]; *Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 930 [section 425.11 applies to "all causes of action," including "nonpersonal injury claims," that are "tied . . . closely to the personal injury claims"].)

⁵ On December 2, 2016 Shamsian and Omidakhsh filed an ex parte application for entry of the consulting agency's default.

F. *The Trial Court Grants a Motion by Shamsian and Omidakhsh To Deem Admitted Requests for Admission Against the Consulting Agency*

Meanwhile, on October 6, 2016 Shamsian and Omidakhsh served all three defendants with requests for admission regarding their damages. They asked the defendants to admit that Shamsian and Omidakhsh each suffered \$2 million in pain, suffering and inconvenience damages, \$1 million in emotional distress damages, \$50,000 in medical expenses, \$50,000 in future medical expenses, \$120,000 in lost earnings, \$2 million in loss of future earning capacity damages, and \$2 million in civil penalties, and that the defendants had the ability to pay \$10 million in punitive damages. None of the defendants responded. On November 23, 2016, Shamsian and Omidakhsh filed motions to deem admitted the matters in their requests for admission. The trial court denied the motion against Lord and Butcher because the clerk had already entered their default, but granted the motion against William A. Butcher Company, Inc. because the clerk had not yet entered its default.

The trial court's order denying the request for entry of default states: "The Clerk of the Court is ordered to enter default of defendant William A. Butcher Company, Inc. ('Defendant[']') upon [Plaintiffs'] filing of a proper Request for Entry of Default (CIV-100). This order shall be attached to the Request for Entry of Default."

G. *Shamsian and Omidakhsh Fail To Obtain a Default Judgment, and the Trial Court Dismisses Their Complaint*

Shamsian and Omidakhsh made three unsuccessful attempts to obtain a default judgment, each time submitting declarations and exhibits in support of their requests. The trial court denied the first two requests without prejudice. The court denied the third request and dismissed the complaint “without prejudice” as a sanction for failing to obtain a default judgment within 45 days after the entry of the defaults. (Rule 3.110(h).) The trial court’s rulings on the second and third requests for entry of a default judgment referred back to the court’s ruling on the first request.

On April 27, 2017, in response to the first request for a default judgment, the court ruled Shamsian and Omidakhsh were entitled to recover \$1,710 in costs, which the court found were reasonable. The court also ruled that civil penalties were available under the Act. But the court awarded \$0 in damages. The court stated: “Plaintiffs fail to provide sufficient evidence to substantiate their damages. While Plaintiffs submit that they paid \$2,995.00 to Defendants and that Omidakhsh[] incurred medical bills related to her hypertension and preeclampsia of \$43,272.24, no other further evidence is provided to substantiate Plaintiffs’ asserted damages. And Plaintiffs request \$50,000.00 for medical expenses despite the evidence showing medical expense of \$43,272.24. Plaintiffs provide no further evidence substantiating any claims for past or ongoing emotional distress and pain and suffering, such as visits to health care professionals for relief of such emotional distress. And Plaintiffs provide no evidence in support of the claims for future medical expenses, lost

earnings, or future lost earning capacity. Thus, Plaintiffs' request for entry of default judgment is unsupported by the evidence and cannot be entered." The court also ruled Shamsian and Omidakhsh were required to submit their proposed judgment on Judicial Council form JUD-100, failed to specify the basis for their request for attorneys' fees, and failed to present evidence of net worth in support of their request for punitive damages.

On June 5, 2017 the trial court rejected the second request by Shamsian and Omidakhsh for a default judgment solely because the request "repeat[ed]" the request for punitive damages without evidence of net worth: "This is Plaintiff[s]' second request and they repeat the request for punitive damages. The Court already rejected the first request for entry of default judgment on such basis. The Court need not conduct further analysis of the request given Plaintiffs disregard of the Court's order and Plaintiffs' request is again rejected. Refer to the prior Court rulings." The court stated it might dismiss the case under rule 3.110(h): "Plaintiff is referred to [rule] 3.110(h), which requires that Plaintiff must obtain a default judgment within 45 days after the default was entered, unless the court has granted an extension of time. . . . The Court is granting Plaintiff one more final extension. Failure to cure the deficiencies will subject this case to dismissal."

The third request by Shamsian and Omidakhsh for a default judgment did not include punitive damages. On August 10, 2017, more than 11 months after the clerk had entered the first defaults, the trial court denied the third application, finding Shamsian and Omidakhsh had made only "thinly veiled requests for punitive damages." The court ruled: "This is Plaintiffs' third request for entry of default judgment. Plaintiffs again request

excessive and unsubstantiated damages that appear to be nothing more than thinly veiled requests for punitive damages. The Court has already addressed this issue multiple times, but Plaintiffs' counsel still argues for the propriety of [punitive damages] in his supporting declaration. For example, on April 27, 2017, the court explained in a seven page ruling [in response to the first request] the deficiencies with that request for default judgment of \$17,246[,]710.00. In this request although Plaintiff[s] [have] lowered [their] damages request to \$7,239,982.24 [by omitting the request for punitive damages,] [they] still fail[] to cure the deficiencies. [¶] Accordingly, after the repeated requests for entry of default judgment and failure to obtain such entry, pursuant to California Rules of Court Rule 3.110(h) the request for entry of default judgment is DENIED [and] the Complaint is DISMISSED WITHOUT PREJUDICE.” (Fns. omitted.)

The trial court signed the minute order dismissing the case. Shamsian and Omidakhsh timely appealed from the order.

DISCUSSION

Shamsian and Omidakhsh argue the trial court abused its discretion in denying their request for a default judgment and dismissing the complaint. They also argue the trial court abused its discretion in denying their motions to deem matters admitted by Lord and Butcher. The first argument has merit, the second does not.

A. *The Trial Court Abused Its Discretion in Denying the Request for Default Judgment and Dismissing the Complaint*

1. *Shamsian and Omidakhsh Submitted Sufficient Evidence of Their Damages and Recoverable Penalties*

By failing to respond to the complaint, Lord, Butcher, and their consulting agency admitted the material facts alleged in the complaint and established their liability. (See *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 898 [failing to answer a complaint “has the same effect as admitting the well-pleaded allegations of the complaint, and as to those admissions *no further proof of liability is required*”]; *Kim v. Westmoore Partners, Inc.* (2011) 201 Cal.App.4th 267, 281 “[b]ecause the default *confesses* those properly pleaded facts, a plaintiff has no responsibility to provide the court with sufficient evidence to prove them—they are treated as true for purposes of obtaining a default judgment”].) In their declarations, Shamsian and Omidakhsh provided even more detail of the defendants’ failures and misrepresentations.

Shamsian and Omidakhsh, at the default judgment stage, needed only make a prima facie showing of their damages. (See *Carlsen v. Koivumaki, supra*, 227 Cal.App.4th at pp. 899-900 “[t]he only evidentiary facts that have a place at a [default] prove-up hearing are those concerning the damages alleged in the complaint”]; *Kim v. Westmoore Partners, Inc., supra*, 201 Cal.App.4th at p. 288 [“plaintiffs in a default judgment proceeding must prove they are entitled to the damages claimed”]; *Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357,

361-362 [prima facie case, not preponderance of the evidence, is the applicable standard]; rule 3.1800(a)(2) [party seeking default judgment must provide “declarations or other admissible evidence in support of the judgment requested”].) Proving those damages by declaration was proper (see Code Civ. Proc., § 585, subd. (d)), even preferred under the applicable local rules (see Los Angeles Superior Court Rules, rule 3.201(a) [“[d]etermination of applications for default judgment on declarations . . . is the preferred procedure”]).

A trial court must consider evidence submitted in support of a default judgment and, where the plaintiff makes a prima facie showing of damages, the court must award a just amount. Code of Civil Procedure section 585, subdivision (b), provides: “The court shall hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff’s favor for that relief, not exceeding the amount stated in the complaint, [or] in the statement provided for by [Code of Civil Procedure] Section 425.11 . . . as appears by the evidence to be just.” A court may not disregard evidence establishing a prima facie case for damages. (See *Johnson v. Stanhiser*, *supra*, 72 Cal.App.4th at pp. 361-362 [“where a cause of action is stated in the complaint and evidence is introduced to establish a prima facie case the trial court may not disregard the same”]; *Taliaferro v. Davis* (1963) 216 Cal.App.2d 398, 408-409 [same].)

We review the record for sufficient evidence to support an award of damages. (See *Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1432 [plaintiff must affirmatively establish a right to relief by introducing sufficient evidence]; *Scognamillo v. Herrick* (2003) 106 Cal.App.4th 1139, 1150 [“the issue of speculative damages is subject to review where . . . the damages

awarded are unsupported by sufficient evidence”]; *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1745 [“the general rule that the sufficiency of the evidence tendered in a default proceeding cannot be reviewed on appeal from a default judgment” does not apply to damages].)

The trial court found Shamsian and Omidakhsh had not proved any damages. Not true. For example, the admitted allegations of the complaint and the declarations of Shamsian and Omidakhsh established they were entitled to recover the \$2,995 they paid to the defendants and to an award of noneconomic damages. Both Shamsian and Omidakhsh described in detail the toll the defendants’ conduct had taken on their health and well-being, and how the defendants’ conduct had negatively affected their emotional and physical conditions. The declarations of Shamsian and Omidakhsh were more than sufficient to support a substantial award of noneconomic damages. (See *Knutson v. Foster* (2018) 25 Cal.App.5th 1075, 1096 [“[t]he law in this state is that the testimony of a single person, *including the plaintiff*, may be sufficient to support an award of emotional distress damages”]; *Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1097 [“[i]f credited by the jury, [plaintiff’s] testimony about the extreme pressure she was under and her state of mind . . . may well be sufficient to support an award of damages for emotional distress”].)

Shamsian and Omidakhsh also established they were entitled to compensatory damages against William A. Butcher Company, Inc. as “conclusively established” by the deemed admitted requests for admission. (Code Civ. Proc., § 2033.410, subd. (a); see *Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 30.) “A request for admission may relate to a matter that is in

controversy between the parties” (Code Civ. Proc., § 2033.010; *Stover*, at p. 30), including ultimate conclusions of fact. (*Gribin Von Dyl & Associates, Inc. v. Kovalsky* (1986) 185 Cal.App.3d 653, 662; cf. *Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 971 [trial court properly granted a motion for summary judgment based on deemed admissions]; *Gribin*, at p. 662 [deemed admissions established each of the elements necessary to support summary judgment in favor of the plaintiff]; *Barnett v. American-Cal Medical Services* (1984) 156 Cal.App.3d 260, 266 [trial court properly considered deemed admissions in granting a motion for summary judgment].)⁶

Shamsian and Omidakhsh also established they were entitled to civil penalties and attorneys’ fees under the Act. The Act prohibits an immigration consultant from, among other things, making false or misleading statements to a client, making oral promises or guarantees, and stating the consultant can obtain special favors from, or has special influence with, government officials. (Bus. & Prof. Code, § 22444.) Lord and Butcher (allegedly and admittedly) did all those things. The Act also authorizes an injured party to file a civil action against an

⁶ Shamsian and Omidakhsh argue the deemed admissions were also binding on Lord and Butcher because Shamsian and Omidakhsh alleged Lord and Butcher were jointly liable as agents and coconspirators. The law is to the contrary. Code of Civil Procedure section 2033.410, subdivision (b), provides that “any admission made by a party under this section is binding only on that party” (See *Taylor v. Socony Mobil Oil Co.* (1966) 242 Cal.App.2d 832, 834 [admission implied from the default of a defendant employee and agent was not binding on an answering codefendant employer and principal on an agency theory].)

immigration consultant for violations of the Act and to recover, in addition to damages, civil penalties not to exceed \$100,000 for each violation of the Act. (Bus. & Prof. Code, § 22445, subd. (a)(1).) The Act provides that the court “shall impose a civil penalty for each violation of this chapter.” (*Id.*, § 22445, subd. (a)(2).) The Act also sets forth the factors the court may consider in assessing the amount of the penalty to be imposed: “In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities, and net worth.” (Bus. & Prof. Code, § 22445, subd. (a)(2).) Shamsian and Omidakhsh made a prima facie showing of entitlement to civil penalties under these factors.

With respect to attorneys’ fees, Shamsian and Omidakhsh relied on the Act, Business and Professions Code section 22446.5, subdivision (a), which provides that the court “shall also grant a prevailing plaintiff reasonable attorneys’ fees and costs.” Counsel for Shamsian and Omidakhsh stated in his declaration, “Plaintiffs are entitled to recover their attorney’s fees in this action pursuant to Section 22446.5(a) of the Business and Professions Code.” He also provided his hourly rate and detailed the time he spent on the case. The trial court also erred in failing to rule on the request by Shamsian and Omidakhsh for injunctive relief, which the Act also authorizes (Bus. & Prof. Code § 22446.5, subd. (a)) and which a plaintiff can obtain in a default judgment. (See *Hassell v. Bird* (2018) 5 Cal.5th 552, 542 [plaintiffs obtained

a default judgment and an injunction]; *Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 382 [trial court entered a default judgment awarding damages and injunctive relief].)

Finally, the trial court erred in requiring Shamsian and Omidakhsh to use a judgment form approved by the Judicial Council. Contrary to the court's ruling, use of Judicial Council Form JUD-100 is not mandatory. (See *Holloway v. Quetel*, *supra*, 242 Cal.App.4th at pp. 1434, 1435 [“Judicial Council judgment forms must be used [only when] required”], quoting Super. Ct. L.A. County, Local Rules, rule 3.213(b).) Shamsian and Omidakhsh complied with rule 3.1800(a)(6) by submitting “[a] proposed form of judgment.”

2. The Trial Court Did Not Issue an Order To Show Cause Before Dismissing the Complaint

The trial court dismissed the complaint pursuant to rule 3.110(h). We review that ruling for abuse of discretion. (Cf. *Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 429, 439-440 [discretionary dismissal for delay in prosecution]; *Van Keulen v. Cathay Pacific Airways, Ltd.* (2008) 162 Cal.App.4th 122, 131 [same].)

Rule 3.110(h) states: “When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time. The court may issue an order to show cause why sanctions should not be imposed if that party fails to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment within that time.” “Responsive papers to an order to show cause issued under this

rule must be filed and served at least 5 calendar days before the hearing.” (Rule 3.110(i).)

The trial court never issued an order to show cause. Before the court dismissed their complaint, Shamsian and Omidakhsh were entitled to formal notice and an opportunity to show cause why, even if they were unsuccessful in obtaining a default judgment on the third attempt, the court should nevertheless not dismiss their case. The failure to issue an order to show cause as required by rule 3.110(h) deprived Shamsian and Omidakhsh of the opportunity to reply under rule 3.110(i).

The warning in the court’s minute order denying the second request for a default judgment was not enough. True, the court’s minute order states, “Failure to cure the deficiencies [in the request for entry of a default judgment] will subject this case to dismissal.” But there never was a hearing on the court’s warning, an opportunity for Shamsian and Omidakhsh to file declarations explaining the delays and difficulties in obtaining the default judgment, or an opportunity for Shamsian and Omidakhsh to be heard on whether dismissal was an appropriate remedy for the court’s perceived failures in their default judgment papers.

B. *The Trial Court Did Not Abuse Its Discretion in Denying the Motions To Deem Matters Admitted by Lord and Butcher*

As noted, the clerk entered the defaults of Lord and Butcher on September 2, 2016. Shamsian and Omidakhsh served requests for admission on Lord and Butcher on October 6, 2016. After Lord and Butcher failed to respond, the trial court denied the motion by Shamsian and Omidakhsh to deem admitted the

matters in the requests for admission. We review that ruling for abuse of discretion. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 540 [“[w]e review the trial court’s grant or denial of a motion to compel discovery for an abuse of discretion”]; *Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733 [“[a] trial court’s determination of a motion to compel discovery is reviewed for abuse of discretion”]; *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, 282 [“[g]enerally, [t]he standard of review for a discovery order is abuse of discretion, because management of discovery lies within the sound discretion of the trial court”]; see also *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [courts review an order denying relief from deemed admissions for abuse of discretion]; *Gribin Von Dyl & Associates v. Kovalsky, supra*, 185 Cal.App.3d at p. 660 [trial court did not abuse its discretion in refusing to relieve a defendant from deemed admissions].)

A defendant in default has no rights or obligations in the litigation other than the right and the obligation to make a motion to set aside the default. (See *Steven M. Garber & Associates v. Eskandarian* (2007) 150 Cal.App.4th 813, 823 [“[t]he entry of a default cuts off the right to file pleadings and motions, and the right to notices and the service of pleadings”]; *Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1301 [same]; *People v. One 1986 Toyota Pickup* (1995) 31 Cal.App.4th 254, 259 [“entry of a default terminates a defendant’s rights to take any further affirmative steps in the litigation until either the default is set aside or a default judgment is entered”].) Therefore, after the clerk entered their defaults, Lord and Butcher could not respond to discovery, and the court could not deem admitted the matters in the requests for admission for failure to respond to

discovery. The trial court did not abuse its discretion in declining to sanction Lord and Butcher for not doing something they could not do.

Had Omidakhsh and Shamsian first served their requests for admission on Lord and Butcher, waited for the statutory response time to expire, and then obtained a ruling on a motion to deem the requests admitted *before* asking the clerk to enter the defendants' defaults, the result might have been different. The trial court may have granted the motion to deem the requests admitted against Lord and Butcher as well as to the agency. But because Omidakhsh and Shamsian chose to proceed as they did, they gained the entry of the defaults of Lord and Butcher, but thereafter lost the right to ask the court to deem admitted the subsequently-served requests for admission as to those defendants.

DISPOSITION

The order dismissing the complaint is reversed and the matter is remanded with directions to grant the request for default judgment and make appropriate awards of compensatory damages, statutory penalties, injunctive relief, and attorneys' fees. Shamsian and Omidakhsh are to recover their costs on appeal.

SEGAL, J.

We concur:

ZELON, Acting P. J.

FEUER, J.