

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re MARRIAGE of RAHMAN NADER
GHADIMI and GUILTY GHADIMI.

RAHMAN NADER GHADIMI,

Respondent,

v.

GUILTY GHADIMI,

Appellant.

B284298

(Los Angeles County
(Super. Ct. No. BD483214))

APPEAL from orders of the Superior Court of Los Angeles
County, Bruce G. Iwasaki, Judge. Affirmed.

Lopez Law Group and Eve Lopez for Appellant Guity
Ghadimi.

Blank Rome and Glenn S. Buzard for Respondent Rahman
Nader Ghadimi.

This appeal arises out of a marital dissolution proceeding that has been pending for over 10 years. Appellant Guity Ghadimi appeals from an order denying her motion to set aside a judgment entered on reserved issues pursuant to a mediated settlement agreement. She also appeals from an order denying her postjudgment motions to compel further discovery responses from respondent Rahman Nader Ghadimi. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Marital Dissolution Proceeding

Guity Ghadimi and Rahman Nader Ghadimi were married in 1994 and separated in 2008.¹ During their marriage, Nader was involved in the commercial real estate business and Guity was a homemaker. The couple maintained an affluent standard of living. In April 2008, Nader filed a petition for dissolution of the marriage. The trial court entered a status-only judgment dissolving the marriage in November 2010. Following a nine-day trial in 2011, which addressed the character of real estate assets wholly or partially owned by Nader, the court entered a judgment on reserved issues in August 2013. The parties exchanged final declarations of disclosure prior to the 2011 trial.

¹ As is customary in dissolution proceedings, we refer to the parties by their first names for clarity of reference, and not out of disrespect. (*In re Marriage of Schmir* (2005) 134 Cal.App.4th 43, 46, fn. 1.)

II. Judgment Pursuant to a Settlement Agreement

On July 31, 2015, the parties, along with their respective attorneys and forensic accountants, participated in a mediation before retired Judge Aviva Bobb. At the close of the mediation, the parties and their counsel executed a 10-page document entitled “Deal Memorandum,” which stated that it resolved all remaining issues in the dissolution proceeding and would be incorporated into a stipulated further judgment to be filed with the court. As part of the Deal Memorandum, Guity was awarded, among other items, a \$650,000 equalization payment, a \$500,000 “buy out” payment in exchange for waiving her right to any further spousal support, a \$350,000 transfer from Nader’s Individual Retirement Account (IRA) to an IRA designated by Guity, and a Beverly Hills condominium valued at \$1.3 million (with Nader agreeing to assume encumbrances on the property totaling approximately \$550,000). Nader was awarded all business and real estate investments, all bank and retirement accounts (apart from the \$350,000 IRA transfer to be made to Guity), and all other assets held in his name. The parties agreed to be solely responsible for paying their respective attorney’s fees, expert fees, and costs incurred in the action, and Guity agreed to indemnify Nader and hold him harmless from a *Borson*² motion filed by her former counsel. The parties further agreed to waive all claims for reimbursement.

The Deal Memorandum expressly stated that “[a]ll claims and issues that are resolved by this Agreement are enforceable pursuant to Code of Civil Procedure section 664.6,” and that the trial court “shall retain jurisdiction to enforce the terms of this

² *Marriage of Borson* (1974) 37 Cal.App.3d 632 (*Borson*).

Agreement.” It also stated that the parties had “served their respective preliminary and final Declarations of Disclosure (prior to the 2011 phase of trial),” and that “[t]he fact that the parties have not exchanged updated Declarations of Disclosure shall not be grounds to set aside this Deal Memorandum.” In addition, the Deal Memorandum provided that, in the event either party retained the services of counsel to enforce its terms or the resulting judgment, “the prevailing party shall be entitled to reasonable attorneys’ fees as determined by the [c]ourt.”

The Deal Memorandum included the following provisions regarding the parties’ knowing and voluntary execution of the agreement: “[¶] The parties each understand that if this case went to trial, either party could do better or worse and that the full impact of this Deal Memorandum will not be known for many years. Nevertheless, each party is entering into this Deal Memorandum freely and voluntarily and has had sufficient time to consider the terms of this Deal Memorandum, and each has had the opportunity to consult with attorneys and accountants in connection therewith. [¶] Petitioner and Respondent have each had the opportunity to retain separate counsel in connection with the negotiations for, and execution of, this Deal Memorandum. Petitioner has been represented by Glenn Buzard from Buter, Buzard, Fishbein & Royce, LLP and Respondent has been represented by Nick Cuneo from Cuneo & Hoover. [¶] Petitioner and Respondent each represent for themselves by their respective signatures below that they have carefully read this Deal Memorandum and that they are completely familiar with and understand each and every provision hereof, and that the provisions of this Deal Memorandum are fair and just in all of its particulars. [¶] Both parties have entered into, executed and

accepted this Deal Memorandum of their free and voluntary will, with such express understanding and knowledge.” Directly above the signature line, the Deal Memorandum also included the following language in large, bold type: “By executing this agreement each of us understands that we are entering into a binding agreement that is enforceable pursuant to California Code of Civil Procedure section 664.6.” Both the parties and their attorneys signed the Deal Memorandum.

Guity subsequently refused to execute a stipulated judgment prepared by Nader. On October 23, 2015, Nader filed a request for entry of judgment under Code of Civil Procedure section 664.6. On December 4, 2015, the trial court granted the request on the condition that Nader serve an updated final declaration of disclosure, including an updated income and expense declaration, prior to submitting the proposed judgment. On December 23, 2015, Nader served his updated final declaration of disclosure on counsel for Guity. On January 22, 2016, over Guity’s objection, the trial court entered a further judgment on reserved issues pursuant to the terms of the Deal Memorandum. A notice of entry of judgment was served on the parties on that date. Guity did not file an appeal from the January 22, 2016 judgment.

III. Guity’s Motion for Relief from the Judgment

On July 20, 2016, Guity filed a motion to set aside the January 22, 2016 judgment pursuant to Code of Civil Procedure section 473 and Family Code sections 2102 and 2122. Guity argued that the judgment should be set aside because Nader did not comply with his statutory obligations to serve an updated final declaration of disclosure prior to the July 31, 2015 mediation session. Guity also asserted that she was “pressured”

into signing the Deal Memorandum at the mediation without a full understanding of its terms; however, she did not identify any specific individual that had exerted such pressure. In addition, Guity claimed that the Deal Memorandum was unfair to her because it terminated her right to spousal support despite the parties' long-term marriage and resulted in an unequal property division that left her with fewer assets than liabilities.

In his opposition to Guity's motion, Nader contended that he had complied with his disclosure obligations by serving a final declaration of disclosure prior to the 2011 trial, and by serving an updated declaration of disclosure prior to entry of the January 22, 2016 judgment in accordance with the court's order. Nader also argued that, under applicable case law and the terms of the Deal Memorandum, any failure to exchange updated declarations of disclosure prior to the mediation did not constitute grounds for setting aside the judgment. Nader further asserted that Guity was not entitled to the relief sought because she failed to provide any credible evidence to support her claim that she signed the Deal Memorandum under duress or that she was unable to understand its terms. Nader requested that Guity be ordered to pay his attorney's fees pursuant to Family Code section 271 based on her conduct in frustrating the parties' settlement.

On June 30, 2017, the trial court denied Guity's motion to set aside the January 22, 2016 judgment. In a 35-page written ruling, the court explained that Guity was not entitled to relief from the judgment "[b]ecause (1) policies favoring resolution through mediation and the finality of judgments outweigh the interests in strict compliance with the rules for financial disclosure; (2) the parties expressly waived updated disclosures; (3) [Guity's] claim that she had 'no choice' but to sign the Deal

Memorandum lacks evidence; and (4) [Guity] offers no evidence of a miscarriage of justice.” The court also found that Nader was entitled to recover his attorney’s fees under both Family Code section 271 and the provision in the Deal Memorandum authorizing an award of reasonable attorney’s fees to the prevailing party in an action to enforce the terms of the agreement. The court ordered Guity to pay attorney’s fees to Nader in the sum of \$77,500.

IV. Guity’s Postjudgment Discovery

Prior to the entry of the January 22, 2016 judgment, the parties engaged in extensive discovery. Between 2008 and 2015, Guity served seven sets of document demands on Nader, and in response, Nader produced thousands of pages of documents. On August 23, 2016, while her motion to set aside the January 22, 2016 judgment was pending, Guity propounded an additional 106 document demands and 192 special interrogatories. In response to these discovery requests, Nader provided certain documents and information, but otherwise objected to the requests on various grounds, including that they were overly broad, unduly burdensome, and impermissible under Family Code section 218.

On February 10, 2017, Guity moved to compel further responses to her postjudgment document demands and special interrogatories. Her two motions were accompanied by separate statements that totaled 715 pages and 875 pages, respectively. Guity asserted that she was entitled to the discovery sought to enable her to adequately prepare for the hearing on her request to set aside the judgment. Guity also asked the court to impose monetary sanctions against Nader in the sum of \$18,345 based on his alleged failure to comply with his discovery obligations.

Nader filed opposition to Guity's discovery motions. He argued that the requests propounded by Guity far exceeded the scope of permissible discovery under Family Code section 218 and were unduly burdensome. In support of his argument, Nader noted the parties had already conducted a substantial amount of discovery and had participated in a lengthy trial addressing the proper characterization of various assets. Nader also asserted that the only relevant proceeding pending before the court was Guity's motion to set aside the January 22, 2016 judgment and the parties' related requests for attorney's fees, and that Nader had produced documents reflecting his current income and assets for purposes of that proceeding. In opposing Guity's motions, Nader sought monetary sanctions against Guity in the sum of \$32,425 based on her alleged misuse of the discovery process.

On June 9, 2017, the trial court denied each of Guity's motions to compel and imposed monetary sanctions against her. In an eight-page written ruling, the court addressed the specific interrogatories and document demands that formed the basis for Guity's two motions, and explained why Guity was not entitled to the discovery sought. With respect to Guity's motion to compel further responses to her special interrogatories, the court further concluded: "Overall, many of [Guity's] interrogatories would be unduly burdensome in most civil litigation in a pretrial setting. When propounded for a postjudgment motion on unrelated issues they exceed the limited grounds for discovery permitted by Family Code section 218." With respect to Guity's motion to compel further responses to her document demands, the court similarly concluded: "[Guity's] motion fails to offer evidence showing good cause for production, and fails to demonstrate how the documents sought have any tendency in reason to prove or

disprove why [Guity] claims that she ‘had no choice’ but to sign the Deal Memorandum. Her legal theory ignores the language of Family Code section 218.” The court also found that monetary sanctions against Guity were warranted because her “voluminous discovery requests and motions to compel lacked merit and were made without substantial justification.” The court sanctioned Guity, ordering her to pay Nader \$30,000.

V. Guity’s Notice of Appeal

On August 1, 2017, Guity filed a notice of appeal from the trial court’s June 9, 2017 order denying her discovery motions and imposing monetary sanctions, and the court’s June 30, 2017 order denying her motion to set aside the January 22, 2016 judgment and awarding Nader attorney’s fees.

DISCUSSION

On appeal, Guity argues the January 22, 2016 judgment, entered pursuant to the terms of the parties’ Deal Memorandum, must be set aside because, among other reasons, Nader signed the agreement without serving an updated final declaration of disclosure and without complying with a court order requiring that notice of any settlement be provided to Guity’s former counsel. Guity also argues the June 9, 2017 order denying her discovery motions and imposing monetary sanctions against her must be reversed because the discovery sought was necessary to support her motion to set aside the judgment.

I. Scope of Appellate Review

As a preliminary matter, we address Nader’s contention that Guity has forfeited a number of her claims on appeal by failing to timely appeal from the January 22, 2016 judgment, and

by failing to raise those claims before the trial court in her motion to set aside the judgment. Nader is correct that several of the arguments raised by Guity are not cognizable on appeal.

First, in her opening appellate brief, Guity asserts that she is challenging the trial court's January 22, 2016 entry of judgment pursuant to Code of Civil Procedure section 664.6. However, Guity never filed an appeal from the January 22, 2016 judgment, and the time for doing so has long since expired. The deadline for filing an appeal from a judgment is typically 60 days after service of a notice of entry of judgment. (Cal. Rules of Court, rule 8.104(a)(1) [notice of appeal from a judgment must be filed within 60 days of the notice of entry of judgment or 180 days after entry of judgment, whichever is earlier].) In this case, the notice of entry of judgment was served by the superior court clerk on January 22, 2016, the same date the judgment was entered. The time for filing an appeal from that judgment thus expired on March 22, 2016.³ Because Guity failed to timely appeal the January 22, 2016 judgment, her challenge to the trial court's entry of judgment is jurisdictionally barred. (See *Starpoint*

³ While the filing of a motion to vacate a judgment can extend the time to appeal the underlying judgment, that extension only applies if the motion to vacate is filed and served within the normal time period for filing a notice of appeal from the judgment. (Cal. Rules of Court, rule 8.108(c); see *Starpoint Properties, LLC v. Namvar* (2011) 201 Cal.App.4th 1101, 1107-1108; *In re Marriage of Eben-King & King* (2000) 80 Cal.App.4th 92, 108-109.) Guity did not file and serve her motion to set aside the January 22, 2016 judgment until July 20, 2016, which was more than 60 days after service of the notice of entry of judgment. She was therefore subject to the normal 60-day time limitation for filing an appeal from that judgment.

Properties, LLC v. Namvar, supra, 201 Cal.App.4th at p. 1107 [“[c]ompliance with the requirements for filing a notice of appeal is mandatory and jurisdictional”]; *In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 109 [where appellant filed a motion to set aside a judgment more than 60 days after the notice of entry of judgment was served, the appellate court had “no jurisdiction to review the merits of the judgment”].)

Second, although Guity’s appeal from the June 30, 2017 order denying her motion set aside the judgment was timely filed, she seeks to raise a number of arguments on appeal that were never made in her motion before the trial court. It is well-established that “an appellate court ordinarily will not consider an alleged erroneous ruling where an objection could have been, but was not, raised before the trial court.” (*Martorana v. Marlin & Saltzman* (2009) 175 Cal.App.4th 685, 700; see also *In re Marriage of Binette* (2018) 24 Cal.App.5th 1119, 1130 [“[i]t is . . . a fundamental principle of appellate review that objections must be raised in the trial court to preserve questions for review”].) Guity’s written motion to set aside the judgment was based solely on her claims of duress, inequitable property division, and lack of compliance with financial disclosure requirements. At the hearing on the motion, Guity also raised the alleged failure to provide prior notice of the settlement to her former counsel as an alternative ground for relief. Guity did not argue as part of her motion that the judgment should be set aside because (1) there was no express finding that the parties had entered into a valid and binding settlement; (2) the terms of the Deal Memorandum were not sufficiently certain to be enforceable; (3) the trial court imposed new terms in the judgment that were not included in the Deal Memorandum; or (4) the trial court had prejudged the case

when it heard Nader's request for entry of judgment pursuant to the Deal Memorandum. Because these issues were not brought before the trial court in the motion to set aside the judgment, Guity has forfeited them on appeal. (*In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at pp. 116-117 [where appellant failed to raise certain contentions in her motion to set aside the judgment, she was precluded from asserting them for the first time on appeal].)

II. Motion to Set Aside the Judgment

In denying Guity's motion to set aside the January 22, 2016 judgment, the trial court found that Guity had failed to establish any of the statutory grounds for relief under Code of Civil Procedure section 473 or Family Code section 2122, or to show she suffered prejudice from the claimed errors. On appeal, Guity contends her motion should have been granted because Nader failed to comply with a court order requiring prior notice of the Deal Memorandum to Guity's former counsel; Nader failed to serve an updated final declaration of disclosure and a current income and expense declaration prior to signing the Deal Memorandum; and the Deal Memorandum must be presumed to be the product of undue influence and therefore unenforceable. None of these claims has merit.

A. Overview of Governing Law

Code of Civil Procedure section 473 and Family Code section 2122 provide alternative bases for relief from a marital dissolution judgment, depending upon when the relief is sought. (*In re Marriage of Thorne & Raccina* (2012) 203 Cal.App.4th 492, 499; *In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 33.) Within the first six months after entry of judgment, the court has

discretion to set aside a judgment under Code of Civil Procedure section 473 on the grounds of “mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473, subd. (b); see *In re Marriage of Georgiou & Leslie* (2013) 218 Cal.App.4th 561, 570.) After six months have passed, Family Code section 2122 “sets out the exclusive grounds and time limits for an action or motion to set aside a marital dissolution judgment.” (*In re Marriage of Georgiou & Leslie, supra*, at p. 571, italics omitted.) Under this statute, there are six grounds to set aside a judgment: actual fraud; perjury; duress; mental incapacity; mistake; or failure to comply with financial disclosure requirements. (Fam. Code, § 2122, subds. (a)-(f); see *In re Marriage of Binette, supra*, 24 Cal.App.5th at p. 1125.) However, before granting relief under Family Code section 2122, the court must “find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.” (Fam. Code, § 2121, subd. (b).)

We review a trial court’s ruling on a motion to set aside a marital dissolution judgment for abuse of discretion. (*In re Marriage of Walker* (2012) 203 Cal.App.4th 137, 146; *In re Marriage of Eben-King & King, supra*, 80 Cal.App.4th at p. 118.) ““The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.” [Citations.] The burden is on the complaining party to establish abuse of discretion. [Citation.]” (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 682.)

B. The Trial Court Did Not Abuse Its Discretion In Denying Relief Under Code of Civil Procedure Section 473

Section 473, subdivision (b) states in pertinent part: “The court may, upon any terms as may be just, relieve a party . . . 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.” (Code Civ. Proc., § 473, subd. (b).) As reflected in the language of the statute, a motion for relief brought within the six-month jurisdictional period is not necessarily timely. (*Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal.2d 523, 528; *Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1420.) Because the statute also requires that the motion be made “within a reasonable time” after entry of the challenged order, “a threshold requirement for relief is the moving party’s diligence.” (*Huh v. Wang, supra*, at p. 1420.) “What constitutes “a reasonable time in any case depends upon the circumstances of that particular case” [citation] and is a question of fact for the trial court [citation].” (*Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15, 33.) In general, however, a delay is considered unreasonable and a proper basis for denying relief “when it exceeds three months and there is no evidence to explain the delay.” (*Id.* at p. 34; see *Benjamin v. Dalmo Mfg. Co., supra*, at pp. 531-532 [three-month delay]; *Huh v. Wang, supra*, pp. 1420-1421 [three-and-a-half-month delay]; *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1185-1187 [four-month delay].)

In this case, Guity filed her motion to set aside the January 22, 2016 judgment on July 20, 2016, only two days before the six-month jurisdictional period was set to expire. She offered no

explanation for the extended delay in bringing her motion. In concluding that Guity was not entitled to relief under Code of Civil Procedure section 473, the trial court noted that “the factual bases for [Guity’s] position were known as of July 2015 – when the mediation ended,” and that “[n]o good reason exists why [Guity] waited a year after the mediation and nearly six months after entry of [j]udgment to vacate it.” On appeal, Guity does not contend that she exercised diligence in moving to set aside the judgment, nor does she claim that the trial court erred in finding that she had failed to seek relief within a reasonable time under the statute. Guity also makes no attempt to argue on appeal that she satisfied any of the statutorily-enumerated grounds of mistake, inadvertence, surprise, or excusable neglect. Under these circumstances, Guity has failed to show the trial court abused its discretion in denying her relief from the judgment under Code of Civil Procedure section 473.

C. The Trial Court Did Not Abuse Its Discretion In Denying Relief Under Family Code Section 2122

1. Alleged Failure to Comply With the Trial Court’s Prior *Borson* Order

Guity asserts the trial court erred in denying her motion to set aside the judgment because Nader’s alleged failure to comply with the court’s prior order on a *Borson* motion rendered the Deal Memorandum unenforceable as a matter of law. In *Borson*, the court held that attorneys who have been discharged while a marital dissolution action is pending may, with the former client’s consent, file a motion on the client’s behalf to recover their attorney’s fees. (*Borson, supra*, 37 Cal.App.3d at p. 637.) Here, the record reflects that, on October 19, 2009, the trial court heard a *Borson* motion filed by Guity’s former counsel, the firm of

Meyer, Olson, Lowy & Meyers (MOLM), and issued an order reserving jurisdiction over the issue of attorney's fees owed to the firm. The order also provided that MOLM "shall be given advance written notice by new counsel for Respondent or Respondent and counsel for Petitioner or Petitioner, at least (15) days prior to the execution of any deal memo, agreement entered pursuant California Code of Civil Procedure [s]ection 664.6, Marital Settlement Agreement, . . . or any agreement, Stipulation or Court Order, resolving any issues regarding payment of attorneys' fees and costs."

Prior to the July 31, 2015 mediation, Guity's counsel at the time provided written notice to MOLM that a mediation would be taking place, and thereafter received a response asking counsel to contact MOLM by telephone if the mediation addressed the issue of attorney's fees. The Deal Memorandum signed by the parties at the conclusion of the mediation included the following provision regarding MOLM's pending *Borson* motion: "[Guity] shall indemnify and hold [Nader] harmless from the *Borson* Motion filed by MOLM. [Guity] shall forthwith file a notice of withdrawal of her consent to said *Borson* Motion. If, notwithstanding the withdrawal of consent, MOLM proceeds with the Motion and prevails, [Nader] has the right to deduct the amount of the award from the \$440,000 balloon payment due on February 1, 2016. . . ." According to Guity, neither the parties nor their respective counsel ever gave MOLM notice of the Deal Memorandum prior to signing it.

On appeal, Guity contends the failure to provide MOLM with prior notice of the Deal Memorandum in accordance with the trial court's October 19, 2009 *Borson* order requires that the entirety of the January 22, 2016 judgement be set aside. She

cites no legal authority to support this contention. A party seeking to set aside a judgment under Family Code section 2122 must establish the existence of at least one of the six exclusive grounds for relief enumerated in the statute (Fam. Code, § 2122, subds. (a)-(f)), and also must show this ground affected the original outcome of the proceedings in such a way that he or she would materially benefit from the granting of relief (Fam. Code, § 2121). “In other words, the moving party must establish both the presence of at least one of the [six] factors listed in [Family Code] section 2122, and that this resulted in material disadvantage to the moving party.’ [Citation.]” (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 89 (*Kieturakis*).) While Guity broadly asserts that she was entitled to relief under Family Code section 2122, she does not suggest that the lack of compliance with a *Borson* order requiring prior notice of a settlement to her former counsel in any way constituted actual fraud, perjury, duress, mental incapacity, mistake, or a failure to disclose assets and liabilities. Guity also has not shown that she was materially disadvantaged by the parties’ mutual failure to inform her former counsel that a settlement involving attorney’s fees had been reached. Guity merely claims that MOLM may be “aggrieved” by the parties’ agreement on attorney’s fees, but she fails to demonstrate how the firm’s lack of prior notice of that agreement caused any detriment to her. Guity had notice of the proceedings, participated in the mediation along with her then current counsel, and agreed to the terms of the Deal Memorandum, including the provision regarding the fees owed to MOLM. The parties’ failure to provide her former counsel with prior notice of Deal Memorandum is not a ground on which to grant Guity relief from the resulting judgment.

2. Alleged Failure to Comply With Statutory Disclosure Requirements

Guity also argues her motion to set aside the January 22, 2016 judgment should have been granted because Nader failed to comply with his statutory disclosure obligations by serving Guity with an updated final declaration of disclosure prior to signing the Deal Memorandum. The Family Code requires the parties to a marital dissolution proceeding to serve each other with a preliminary declaration of disclosure identifying all assets and liabilities. (Fam. Code, § 2104, subd. (a).) Before entering into an agreement for the resolution of property or support issues, or before any trial, each party also must serve the other with “a final declaration of disclosure and a current income and expense declaration.” (Fam. Code, § 2105, subd. (a).) Absent good cause, “no judgment shall be entered with respect to the parties’ property rights without each party . . . having executed and served a copy of the final declaration of disclosure and current income and expense declaration.” (Fam. Code, § 2106.) Subject to certain statutory exceptions, “if a court enters a judgment when the parties have failed to comply with all disclosure requirements . . . , the court shall set aside the judgment. The failure to comply with the disclosure requirements does not constitute harmless error.” (Fam. Code, § 2107, subd. (d).)

Notwithstanding these disclosure provisions, California courts “have recognized that when parties to a marital dissolution agree to settle their property or support issues by nonjudicial arbitration or mediation, they may do so without strictly complying with the technical requirements of Family Code section 2104 or 2105.” (*Lappe v. Superior Court* (2014) 232 Cal.App.4th 774, 782 (*Lappe*); see *Elden v. Superior Court* (1997) 53 Cal.App.4th 1497, 1508 (*Elden*) [“parties to a dissolution who

have agreed to engage in private arbitration of their property issues are entitled to adopt other, more summary procedures for financial disclosure”]; *In re Marriage of Woolsey* (2013) 220 Cal.App.4th 881, 892 (*Woolsey*) “[p]arties who agree to settle their dispute by private mediation may also agree to make financial disclosures that do not meet the technical procedural requirements of sections 2104 and 2105”). As the *Woolsey* court explained: “Private mediation, like nonjudicial arbitration, offers an alternate approach to resolve disputed issues arising from a marital dissolution. Requiring technical compliance with disclosure rules designed for adversarial litigation would undermine the strong public policy of allowing parties to choose speedy and less costly avenues for resolving their disputes. . . . Thus, strict compliance with [Family Code] sections 2104 and 2105 is not required for private mediations that address issues arising out of a marital dissolution.” (*Woolsey, supra*, at p. 892.)

After a private mediation or arbitration, “the parties are nonetheless required to execute and serve final declarations of disclosure before the court may enter judgment.” (*Lappe, supra*, 232 Cal.App.4th at p. 782; see *Elden, supra*, 53 Cal.App.4th at p. 1510 [the parties “were obligated after arbitration to serve final declarations . . . pursuant to section 2106 if they were to achieve a final judgment as to their property rights”]; *Woolsey, supra*, 220 Cal.App.4th at p. 892 “[a]fter a mediation in a marital dissolution case, parties must nonetheless comply with section 2106 prior to entry of judgment by the trial court”). However, a failure to comply with the disclosure requirements prior to entry of judgment does not, by itself, compel the reversal of the judgment on appeal. (*In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 526-528 (*Steiner*); *Woolsey, supra*, at p. 894;

Kieturakis, supra, 138 Cal.App.4th at p. 92.) Notwithstanding the language of Family Code section 2107, subdivision (d), nondisclosure is a legitimate basis for setting aside a judgment only if the party seeking relief demonstrates that he or she was prejudiced by the nondisclosure. (*Steiner, supra*, at pp. 527-528; see also *In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 205.) Requiring a showing of prejudice is consistent with the “constitutional mandate embodied in article VI, section 13 of our state Constitution that no judgment may be set aside or new trial granted unless there has been a miscarriage of justice.” (*Steiner, supra*, at p. 526.)

In this case, Guity has failed to show any nondisclosure that caused her to suffer prejudice. It is undisputed that the parties exchanged both preliminary and final declarations of disclosure prior to the 2011 trial. In the Deal Memorandum signed at the July 31, 2015 mediation, the parties expressly acknowledged that they had made these prior financial disclosures, and agreed that the fact that they had “not exchanged updated Declarations of Disclosure shall not be grounds to set aside this Deal Memorandum.” Although Guity is correct that she and Nader did not exchange current income and expense declarations before signing the Deal Memorandum in accordance with Family Code section 2105, such “strict compliance” with the statute was not required for the parties to enter into a binding settlement agreement at their private mediation. (*Woolsey, supra*, 220 Cal.App.4th at p. 892.)

It is also undisputed that, prior to entering a judgment pursuant to the Deal Memorandum, the trial court ordered Nader to serve an updated final declaration of disclosure, including an updated income and expense declaration. Nader served these

documents on Guity on December 23, 2015, and filed a declaration regarding his service thereof with the court. Thus, contrary to Guity's claim, Nader complied with his disclosure obligations by serving both a final declaration of disclosure and a current income and expense declaration prior to entry of the January 22, 2016 judgment. While it appears Guity did not serve Nader with a current income and expense declaration before the judgment was entered, her own lack of compliance with Family Code section 2105 cannot serve as a basis for setting aside the judgment. (*Steiner, supra*, 117 Cal.App.4th at pp. 527-528; *Woolsey, supra*, 220 Cal.App.4th at pp. 893-894.) As the *Steiner* court observed in the context of a motion for new trial: Allowing "a *non-complying* party [to] unilaterally undo a judgment after trial . . . [would] create[] a most perverse set of incentives. . . . [A] party could deliberately not comply with disclosure requirements, keep mum, see if the trial results in an acceptable judgment, and then have the opportunity to obtain a better result by pulling the non-disclosure card out of his or her sleeve on appeal or new trial motion. That is the sort of absurdity of statutory result that courts simply do not countenance." (*Steiner, supra*, at p. 528; see also *Woolsey, supra*, at p. 894 [where wife served preliminary and final declarations of disclosure prior to entry of judgment, husband could "not be heard to complain about his own failure to serve the final financial disclosure"].)

Moreover, Guity has not identified any part of the January 22, 2016 judgment that was materially affected by the alleged nondisclosures. Instead, she asserts, contrary to settled law, that the parties' failure to strictly comply with Family Code section 2105 prior to signing the Deal Memorandum is sufficient, by itself, to require that the judgment be set aside. Because Guity

has failed to demonstrate she was prejudiced by any purported lack of compliance with the statutory disclosure requirements, she was not entitled to relief under Family Code section 2122.

D. Alleged Undue Influence in the Marital Settlement Agreement

Guity further contends the trial court erred in denying her motion to set aside the judgment because the settlement agreement signed by the parties resulted in an inequitable property division, giving rise to a presumption of undue influence. In support of this contention, Guity asserts that the Deal Memorandum was patently unfair to her because, among other things, it did not provide her with an adequate security interest in the event that Nader failed to make the payments due under the agreement, and waived her right to spousal support in exchange for \$500,000 despite the parties' long-term marriage and Nader's substantial income. In essence, Guity's claim is that the parties' mediated settlement agreement must be presumed to be the product of undue influence and unenforceable because Nader got a better deal. This is contrary to the law.

California courts have held that marital settlement agreements reached in mediation cannot be presumed to be the product of undue influence. (*Woolsey, supra*, 220 Cal.App.4th at p. 902; *Kieturakis, supra*, 138 Cal.App.4th at p. 85.) As the *Kieturakis* court explained, "[v]oluntary participation and self-determination are fundamental principles of mediation. . . ." (*Kieturakis, supra*, at p. 85.) Because "[p]ower imbalance[s] between spouses' are a recognized concern when family matters are mediated, . . . '[d]ivorce mediators generally work to balance the negotiating power between the parties. This tends to produce agreements that are more fair and voluntary, rather than

coerced.” (*Ibid.*) Further, if a presumption of undue influence were to apply, “[a]ll unequal mediated agreements would, in effect, be conclusively presumed to be invalid,” and subject to “set aside at the option of the disappointed party.” (*Id.* at p. 86.) “[T]he effectiveness of mediation as a method of settling marital property disputes would be greatly impaired.” (*Ibid.*)

Guity had the burden of proving that she was entitled to relief from the judgment by establishing one of the six grounds enumerated in Family Code section 2122. (*Kieturakis, supra*, 138 Cal.App.4th at pp. 88-89.) In moving to set aside the judgment, Guity argued the Deal Memorandum was the product of duress because she was pressured into signing the agreement without a full understanding of its terms. Duress “is shown where a party “intentionally used threats or pressure to induce action or nonaction to the other party’s detriment. [Citation.]” [Citations.] The coercion must induce the assent of the coerced party, who has no reasonable alternative to succumbing. [Citation.]’ [Citation.]” (*In re Marriage of Balcof* (2006) 141 Cal.App.4th 1509, 1523.) Other than broadly asserting that she was under duress when she signed the Deal Memorandum, Guity offered no evidence of any threats made, or pressure exerted, by Nader or anyone else. Rather, in her supporting declaration, Guity vaguely referred to a dispute with her own attorney, and stated that he failed to explain the agreement to her. Attorney negligence, however, is not a ground for setting aside a judgment under Family Code section 2122. (*In re Marriage of Rosevear, supra*, 65 Cal.App.4th at p. 686.) Further, the record reflects that the mediation took place before a retired family law judge, that Guity attended the mediation with both her attorney and her forensic accountant, and that her attorney was the same one who

had represented her at trial. The Deal Memorandum signed by the parties also expressly stated that they had carefully read and understood the agreement and were voluntarily entering into it of their own free will. In light of this evidence, the trial court reasonably could find that Guity's self-serving statement that she was pressured into signing the Deal Memorandum did not constitute a basis for setting aside the judgment.

We also reject Guity's assertion that the judgment must be set aside because the mediation resulted in an inequitable property division. "It is well settled that parties may agree in writing to an unequal division of marital property. [Citation.]" (*Woolsey*, *supra*, 220 Cal.App.4th at p. 903; see *Mejia v. Reed* (2003) 31 Cal.4th 657, 666 ["Whenever . . . the parties agree upon the property division, no law requires them to divide the property equally, and the court does not scrutinize the [marital settlement agreement] to ensure that it sets out an equal division."].) Likewise, the fact that a dissolution judgment "may have been inequitable to the moving party cannot by itself serve as a basis for setting aside that judgment." (*In re Marriage of Rosevear*, *supra*, 65 Cal.App.4th at p. 684, italics omitted.) "[S]ection 2123 of the Family Code is plain that if a set-aside motion is supported only by an imbalance in the division of community property, the trial court cannot grant the motion." (*In re Marriage of Heggie*, *supra*, 99 Cal.App.4th at pp. 29-30.) Accordingly, even if we were to assume Nader received a more favorable deal in the mediation, that fact alone would not entitle Guity to relief under Family Code section 2122. Based on the totality of the record, the trial court did not abuse its discretion in denying Guity's motion to set aside the January 22, 2016 judgment.

III. Motions to Compel Postjudgment Discovery

On appeal, Guity also challenges the trial court's denial of her two motions to compel further responses to her postjudgment discovery requests. She contends the trial court erred in finding that her requests exceeded the scope of permissible discovery under Family Code section 218. She also claims the trial court erred in imposing monetary sanctions against her based on her misuse of the discovery process. We find no abuse of discretion in the trial court's rulings.

A. The Trial Court Did Not Abuse Its Discretion In Denying Guity's Discovery Motions

We review a trial court's ruling on a motion to compel discovery for abuse of discretion. (*Costco Wholesale Corp. v. Superior Court* (2009) 47 Cal.4th 725, 733.) Family Code section 218 provides, in relevant part, that "[w]ith respect to the ability to conduct formal discovery in family law proceedings, when a request for order or other motion is filed and served after entry of judgment, discovery shall automatically reopen as to the issues raised in the postjudgment pleadings currently before the court." Accordingly, where a party in a marital dissolution proceeding files a postjudgment motion, he or she may seek discovery as to the issues raised in that motion without first obtaining court approval to reopen discovery. By its terms, however, the statute limits the scope of permissible discovery to those "issues raised in the postjudgment pleadings currently before the court."

In this case, Guity served Nader with 106 document demands and 192 special interrogatories while her motion to set aside the January 22, 2016 judgment was pending before the trial court. Guity's requests sought broad categories of information about her former spouse, including his general background,

criminal history, past and current employment, income and earnings, community and separate property and debts, reimbursement claims and credits, and payments or loans made to and from third parties. While Nader agreed to produce certain financial information and documents, including his 2015 income tax returns, current bank account statements, and current personal financial statements, he objected to the majority of the requests on multiple grounds. In denying Guity's motions to compel further responses to her discovery requests, the trial court concluded that the requests sought information "beyond the scope of issues raised in her postjudgment pleadings pending before the [c]ourt and [were] unduly burdensome and oppressive." On this record, the trial court acted well within its discretion in denying Guity's motions to compel further discovery.

For purposes of Family Code section 218, the only postjudgment pleading that was pending before the trial court when Guity propounded these additional discovery requests was her motion to set aside the January 22, 2016 judgment on reserved issues. As discussed, Guity sought relief from that judgment on the grounds of duress, inequitable property division, and lack of compliance with the disclosure requirements. The vast majority of Guity's voluminous interrogatories and document demands, however, sought information beyond the narrow set of issues raised in her motion to set aside the judgment, and lacked any tendency in reason to prove or disprove any of the asserted grounds for relief. Because Guity's discovery requests exceeded the scope of permissible postjudgment discovery under Family Code section 218, the trial court properly denied her motions to compel further responses to those requests.

On appeal, Guity does not identify any specific item of discovery, or even category of discovery, that she believes was relevant to her motion to set aside the judgment, nor does she explain why the trial court erred in denying her requests for such discovery. She merely claims the trial court’s ruling “prevent[ed] [her] from obtaining the documents and information necessary” to prove that Nader had “failed to comply with his disclosure obligations.” Guity makes no attempt, however, to show that her requests were reasonably calculated to lead to the discovery of information about Nader’s alleged lack of compliance with the disclosure requirements, or were otherwise relevant to any of the issues raised in her motion to set aside the judgment. In fact, the only specific error that Guity contends the trial court made in its discovery ruling was a purported finding that Nader had properly objected to Guity’s request for electronically stored information on privacy grounds. However, in its written order, the trial court expressly stated that it was not addressing this particular objection because Guity’s failure to comply with the discovery limitations imposed by Family Code section 218 provided a sufficient basis for denying her motion to compel. Guity has failed to show an abuse of discretion in the trial court’s ruling.

B. The Trial Court Did Not Abuse Its Discretion In Imposing Monetary Sanctions Against Guity

Under Chapter 7 of the Civil Discovery Act, the court “may impose a monetary sanction ordering that one engaging in the misuse of the discovery process . . . pay the reasonable expenses, including attorney’s fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process. . . .” (Code Civ. Proc., § 2023.030, subd.

(a.) “Misuse of the discovery process includes . . . unsuccessfully making or opposing discovery motions without substantial justification. . . .’ [Citation.]” (*In re Marriage of Michaely* (2007) 150 Cal.App.4th 802, 809.) The Civil Discovery Act further provides that “[t]he court shall impose a monetary sanction under Chapter 7 . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel” a further response to interrogatories or document demands, “unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (Code Civ. Proc. §§ 2030.300, subd. (d), 2031.310, subd. (h).) “We review the trial court’s order imposing the sanction for abuse of discretion. [Citation.] We resolve all evidentiary conflicts most favorably to the trial court’s ruling [citation], and we will reverse only if the trial court’s action was ““arbitrary, capricious, or whimsical.”” [Citations.]’ [Citation.]” (*Clement v. Alegre* (2009) 177 Cal.App.4th 1277, 1285-1286.)

On appeal, Guity argues the trial court abused its discretion in ordering her to pay a discovery sanction of \$30,000. She asserts the sanction was “unduly harsh,” and was imposed “without explanation as to the amount.” This argument lacks merit. In its written ruling, the court expressly stated that it was imposing a sanction on Guity in the amount of \$30,000 on the ground that her discovery requests and motions “lacked merit and were made without substantial justification.” The court noted that Guity had propounded voluminous requests that would be “unduly burdensome in most civil litigation in a pretrial setting,” and that she had failed to acknowledge the limits on postjudgment discovery imposed by Family Code section 218. The court also made clear it was acting pursuant to Code of Civil

Procedure sections 2030.300 and 2031.310, which mandate the imposition of a monetary sanction on a party who unsuccessfully moves to compel further discovery responses, unless the sanction would be unjust. The amount of the sanction imposed by the court was consistent with the amount of attorney's fees incurred by Nader in responding to Guity's extensive discovery requests and in opposing her motions to compel.

Guity also claims the trial court erred by failing to consider her financial circumstances in accordance with Family Code section 270. That statute provides that, "[i]f a court orders a party to pay attorney's fees or costs under this code, the court shall first determine that the party has or is reasonably likely to have the ability to pay." (Fam. Code, § 270.) As discussed, however, the trial court ordered a monetary sanction against Guity under the Civil Discovery Act rather than the Family Code. Guity does not cite any legal authority to support her contention that the limits of Family Code section 270 apply to sanctions imposed under Code of Civil Procedure sections 2030.300 or 2031.310. In any event, Guity did not submit any evidence showing an inability to pay the \$30,000 sanction, or otherwise demonstrate to the trial court that her financial circumstances made the imposition of the sanction unjust. The record also reflects that, a few weeks after the trial court ordered the discovery sanction, it made an explicit finding that Guity had the ability to pay Nader an additional \$77,500 in attorney's fees for her conduct in unnecessarily increasing the cost of litigation. The court based that finding on Guity's receipt of over \$1 million as part of the parties' Deal Memorandum. Under these circumstances, the trial court acted within its discretion in imposing a \$30,000 sanction against Guity for her misuse of the discovery process.

DISPOSITION

The trial court's June 30, 2017 order denying Guity's motion to set aside the January 22, 2016 judgment, and the June 9, 2017 order denying Guity's motions to compel further responses to her discovery requests are affirmed. Nader is to recover his costs on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.