

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

Special Set Law and Motion Calendar

Judge: HONORABLE V. RAYMOND SWOPE

Department 23

400 County Center, Redwood City

Courtroom 8A

Wednesday, January 6, 2021

IF YOU INTEND TO APPEAR ON ANY CASE ON THIS CALENDAR YOU MUST DO ONE OF THE FOLLOWING:

1. EMAIL Dept23@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING
2. YOU MUST CALL (650) 261-5123 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do both items 1 or 2 and 3 will result in no oral presentation. N.B. Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

N.B. Notifying CourtCall with your intent to appear is not an alternative to notifying the court.

At this time, all appearances will be by CourtCall. No personal appearances will be allowed. To contact CourtCall, visit <https://courtcall.com/> or call (888) 882-6878. Fee waivers are available.

Failure to comply with these rules will result in no oral presentation.

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case

Title / Nature of Case

9:00

LINE: 1

19-CIV-06772 MONTGOMERY SANSOME, L.P. VS. KIMBERLY COX, ET AL.

MONTGOMERY SANSOME, L.P.
KIMBERLY COX

STEPHEN S. SAYAD
KELSEY J. MOE

MOTION FOR RECONSIDERATION BY KIMBERLY COX

TENTATIVE RULING:

Defendant Kimberly Cox's motion for reconsideration of the Court's order denying Defendant's motion to set aside default is GRANTED, for the reasons set forth below.

Defendant contends the motion for reconsideration should be granted based on newly discovered facts. The newly discovered evidence consists of the declarations of Ms. Cox's fiancée, Kenneth Howse, and her roommate, Desmond Alud. According to Mr. Howse, Ms. Cox was with him in Suisun City January 1, 2020, the day Ms. Cox was purportedly served with the summons and complaint in Pittsburg, CA. According to Mr. Alud, Ms. Cox was not at home in Pittsburg on January 1. Mr. Alud states that he was present when the process server came to Ms. Cox's residence, and he asserts "The Process Server asked if Ms. Cox was home and I replied that she was not." Auld Decl., ¶ 2. According to the declaration of defense counsel Kelsey Moe, "The newly discovered information could not have been presented earlier because the Motion to Set Aside Entry of Default focused primarily on the Court's liberal grounds to set aside the entry of default and the lack of prejudice posed to Plaintiff Montgomery Sansome, L.P." Moe Decl., ¶ 7. Ms. Moe further asserts that "The newly discovered information could also not have been presented earlier because once I learned of the entry of default, I had to move quickly to file the Motion to Set Aside Entry of Default within the six month time frame required by [CCP] § 473(b)." Id., ¶ 8.

In light of the new and different facts and circumstances presented, the Court finds that the order denying Defendant's motion to set aside default should be revoked. The Court notes that no judgment has been entered and Plaintiff has not attempted to demonstrate that it will be prejudiced as a result of setting aside the default. Further, Defendant has now provided a proposed responsive pleading. Finally, the history of litigation between the parties and the interests of justice weigh in favor of a trial on the merits in this action.

For the foregoing reasons, Defendant's motion for reconsideration is GRANTED. The Court's order denying the motion to set aside default is hereby REVOKED, and Defendant's default is hereby SET ASIDE.

If the tentative ruling is uncontested, it shall become the order of the Court. Thereafter, counsel for Defendant shall prepare a written order consistent with the Court's ruling for the Court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court.



POSTED: 3:00 PM