Tentative Rulings for January 22, 2025
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

23CECG02148 ***Ashley Padilla, et al. v. Saint Agnes Medical Center, et al.*** **is continued to Thursday, February 6, 2025, at 3:30 p.m., in Department 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Payne v. Platinum Roadlines, Inc.***
Superior Court Case No. 21CECG01118

Hearing Date: January 22, 2025 (Dept. 501)

Motion: for Order that Oklahoma Law Shall Apply to Comparative Negligence Issues

Tentative Ruling:

To grant and order that Oklahoma law shall apply to comparative negligence issues in this case.

Explanation:

The motion is brought by defendants Platinum Roadlines, Inc., Derrick Tyler and Israel Danjalo-Sani, joined by Gurjot Transportation Corp., and unopposed by plaintiffs Johnny and Barbara Payne (who filed a non-opposition). Given that all parties who have responded are in agreement, the court will grant the motion on the grounds stated in the moving papers.

The court notes that in their non-opposition, plaintiffs claim that "defendants have stipulated to apply not only the Oklahoma law as it applies to Comparative Negligence, but also as to Sections 23-7 regarding interest, 23-9.1 regarding punitive damages, as well as any other Oklahoma substantive law and the fact that Oklahoma recognizes the common law marriage of Plaintiffs for purposes of a loss of consortium claim." (Non-Opp. 2:3-7.) However, plaintiffs support this statement with no evidence or argument. Defendants in the reply deny that there has been any such stipulation, and correctly point out that these additional matters go beyond the scope of the motion before the court. Given the non-opposition, the motion will be granted, but only to the extent specified in the moving papers. Anything beyond that is not properly before the court.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 1/14/2025 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Brar v. Nino***
Case No. 23CECG02438

Hearing Date: January 22, 2025

Motions: by Defendants to Set Aside Defaults and Expunge Lis Pendens

Tentative Ruling:

To deny defendants' motion to set aside the defaults entered against them. To deny defendants' motion to expunge lis pendens and their request for attorney's fees.

Explanation:

Motion to Set Aside Default: Section 473(b) provides for discretionary relief from a default or default judgment that has been entered due to mistake, surprise, inadvertence, or excusable neglect. (Code Civ. Proc. § 473, subd. (b).) The party seeking relief must bring his or her motion within a reasonable time, not to exceed six months from the date of entry of the default or default judgment. (*Ibid*.)

"Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

"'[T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.' [Citation.]" (*Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 256.) "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.)

"The 'surprise' referred to in section 473 is defined to be some 'condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.' The 'excusable neglect' referred to in the section is that neglect which might have been the act of a reasonably prudent person under the same circumstances. A judgment will not ordinarily be vacated at the demand of a defendant who was either

grossly negligent or changed his mind after the judgment." (*Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921, citations omitted.)

In the present case, defendants David Nino, Frank Nino and Victoria Nino have all moved to set aside the defaults entered against them. Frank and Victoria were defaulted on October 22, 2024, after they were served in August 2024 and failed to file responsive pleadings. David was defaulted on December 23, 2024, after he was served on September 1, 2024, and failed to file responsive pleadings. Plaintiffs had previously attempted unsuccessfully to obtain defaults against all three of the defendants several times before the defaults were finally entered, so defendants were given multiple notices that plaintiffs were attempting to enter their defaults. Defendants claim that they were confused and surprised by plaintiffs' attempts to default them, as they believed that the present action was stayed along with the related bankruptcy case by mutual stipulation of the parties, and therefore they did not believe that they had to respond to the plaintiffs' First Amended Complaint. Therefore, they have moved to set aside the defaults under Code of Civil Procedure section 473(b), claiming that the defaults were the result of surprise or excusable neglect.

However, neither Frank nor Victoria have filed their own declarations in support of their motion to set aside the defaults. Thus, they have no evidence that tends to show that their defaults were entered as a result of any mistake, surprise or excusable neglect on their part. They are apparently relying on the evidence submitting by David Nino as well as their attorney, Zena Sin-Zaragoza. Yet Ms. Sin-Zaragoza did not represent Frank or Victoria at the time they were served in August 2024, or when their defaults were entered in October 2024. She was not retained by defendants until late November 2024, so she has no personal knowledge of the reasons why Frank and Victoria did not file a responsive pleading before their defaults were entered. (Sin-Zaragoza decl., ¶ 4.) As a result, her declaration does not tend to show that the defaults entered against Frank and Victoria were the result of surprise, mistake or excusable neglect.

Also, to the extent that Frank and Victoria rely on the declaration of David Nino, David's declaration does not explain why Frank or Victoria did not respond to the First Amended Complaint, other than to say that *he* believed that the case had been stayed and therefore *he* was confused about the fact that plaintiffs were attempting to serve him with the amended complaint and lis pendens. (Nino decl., ¶¶ 9-11.) However, regardless of any explanation he has offered for his own failure to respond to the First Amended Complaint, David has not offered any explanation for Frank and Victoria's failure to respond, so David's declaration does not support Frank and Victoria's request for relief from their default.

In addition, there is no declaration from defendants' prior attorney, Stan Blythe, who represented defendants at the time the stay expired in July 2024, so he has not explained why defendants did not file a responsive pleading after being served. The only evidence before the court regarding Frank and Victoria's defaults indicates that they were properly served with the First Amended Complaint and summons on August 8 and 11, 2024, they failed to file a responsive pleading, and their defaults were taken on October 22, 2024, after two failed attempts to enter their defaults. They also did not move for relief from the defaults until January 2, 2025, over two months after they were defaulted. Thus, the evidence appears to show that Frank and Victoria were defaulted due to their own *in*excusable neglect, and not due to excusable mistake, surprise, inadvertence or neglect. They also failed to diligently move for relief from the default, as

they have not explained why they waited over two months to move to set aside the default. "If there is a delay in filing for relief under section 473, the reason for the delay must be substantial and must justify or excuse the delay." (*Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1181, citations omitted.) As a result, the court intends to deny the motion to set aside the defaults entered against Frank and Victoria.

On the other hand, David Nino has filed his own declaration in support of his motion to set aside the default entered against him. He claims that it was his understanding that the present case was stayed as a result of the stipulations signed by the parties. (Nino decl., ¶ 9.) He also states that, "[w]hile I had knowledge that some documents had been attempted to be served upon me, including a Notice of Pendency of Action, I was thoroughly confused as I believed that the matter was stayed due to Stipulations that were signed by all parties and filed within the Bankruptcy Court." (*Id*. at ¶ 10.) "In fact, I had personally emailed Cathy Cowin on October 31, 2024, advising that there should be a stay in the state court litigation." (*Id*. at ¶ 11.)

However, while David claims that he was confused about whether plaintiffs could properly proceed in the action because the parties had stipulated to a stay of both the state court and bankruptcy cases, the final stipulation clearly states that the stay was going to expire on July 1, 2024. (Defendant's Request for Judicial Notice, Exh. 5, p. 2. The court intends to take judicial notice of the stipulated stay as court records under Evidence Code section 452, subd. (d).) Thus, there does not appear to be any reasonable basis for defendant to have believed that the state court action was still stayed after July 1, 2024, since the parties had clearly not agreed to extend the stay of the action after that date.

Also, plaintiffs point out that, while David is not an attorney, he has been sued in multiple other actions over the last several years, so he has some familiarity with legal procedures. (Plaintiffs' Request for Judicial Notice, Exhs. 4-14. The court intends to take judicial notice of the other cases filed against David Nino as court records under Evidence Code section 452, subd. (d).) In addition, plaintiffs and their attorney allege that David was well aware of the fact that the stay had expired, since he attended settlement negotiations in April and May of 2024 that included a discussion of whether to extend the stay. (William Cowin decl., ¶¶ 20-21; Jay Brar decl. ¶¶ 27-28.) David at first did not want to agree to the stay of the adversary proceeding in the bankruptcy court unless the Fresno case was also stayed. (Brar decl., ¶ 27.) However, the bankruptcy examiner eventually persuaded David to agree to a stay in the adversary proceeding only. (*Id*. at ¶ 28.) Plaintiffs insist that David was "hyper aware (and unhappy) that there was no further stay in the Fresno Case because the lis pendens had been refiled and we would not release the lis pendens." (*Ibid*.)

David's claim that he was "confused" and did not understand that the stay had been lifted or that plaintiffs intended to proceed with the case in state court lacks credibility in light of his extensive experience with prior litigation, as well as his active participation in the negotiations to extend the stay in the cases. In addition, David does not deny that he was served with the new lis pendens and First Amended Complaint, which should have placed him on notice that the state court action was no longer stayed and that plaintiffs were going forward with the case. Furthermore, David was still represented by counsel when the stay expired on July 1, 2024, so his attorney should have advised him that the stay was no longer in effect and that plaintiffs were likely to move forward with the case against him. Again, there is no declaration from David's former

attorney, Stan Blythe, to explain whether he believed that the stay was still in effect or whether he was aware of plaintiffs' intent to move forward with the state court action.

In addition, even after he retained a new attorney and attempted to obtain an extension of time to respond to the First Amended Complaint, David did not seek to file a responsive pleading before the default was entered against him. Defendant's new attorney, Ms. Sin-Zaragoza, engaged in discussions with plaintiffs' counsel in late November and December 2024 in an attempt to extend the deadline to respond. Plaintiffs' counsel granted one extension to December 9, 2024, but did not agree to any other extensions. In the meantime, Ms. Sin-Zaragoza engaged in some meet and confer correspondence regarding a potential demurrer to the amended complaint. However, she never actually filed a demurrer or other response to the amended complaint, even after plaintiffs' counsel's first two requests to enter David's default were denied. Instead, she waited for weeks until the default had been entered before finally filing an ex parte application to set aside the default.

Under these circumstances, David has not shown that the default was entered against him as the result of mistake, surprise, inadvertence or excusable neglect, or that he was diligent in attempting to respond to the First Amended Complaint. In fact, it appears that he was well aware of the fact that the stay had expired in the state court action and that plaintiffs were proceeding with the case against him, as he was present when the parties negotiated the stay of the bankruptcy proceedings but not the state court action. He was also given notice of the lis pendens and he was served with the First Amended Complaint on September 1, 2024, so he should have known that plaintiffs were going forward with their case. Even after he hired a new attorney in late November, and even though he admits that he knew Frank and Victoria had been defaulted in October and that plaintiffs were attempting to enter his default as well, he still failed to file an answer or demurrer before his default was entered on December 23, 2024. These facts indicate that the default was entered against David due to his inexcusable neglect, as he essentially sat on his hands and waited for plaintiffs to enter his default rather than filing a responsive pleading, despite knowing that plaintiffs were going forward with their case and were seeking to enter his default. The court will not reward such willful neglect by granting relief from the default. Therefore, David has failed to meet his burden of showing that he is entitled to relief from the default, and the court intends to deny his motion to set aside the default.

Motion to Expunge Lis Pendens: In light of the fact that the court intends to deny the motion to set aside the defendants' defaults, the court will also deny the motions to expunge the lis pendens, as defendants are still defaulted and therefore they have no standing to bring a motion to expunge. As a result, the court will not reach the merits of the motion to expunge, but instead will summarily deny it.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 1/15/2025.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Little v. Laddi Truck Lines, Inc., et al.***
Superior Court Case No. 22CECG01849

Hearing Date: January 22, 2025 (Dept. 501)

Motion: by Defendants Hardeep Singh and Yuvi Carrier, Inc., to Stay or Dismiss for Inconvenient Forum

Tentative Ruling:

To deny.

Explanation:

This is a motor vehicle personal injury action arising from an accident allegedly caused by Lakhrvir Singh at a Border Patrol Checkpoint at Las Cruces, New Mexico. A related action stemming from the same accident was filed by Cindy Sanchez on 11/8/2023 in New Mexico. That action was subsequently removed to federal court in New Mexico.

Hardeep Singh and Yuvi Carrier, Inc., appeared in the action on 7/7/2023. *A year and a half later*, on 12/6/2024, they filed the instant motion to stay or dismiss for inconvenient forum, contending that the case should be adjudicated in New Mexico largely because the border control agents who witnessed the accident, the accident investigators, the tow truck company, and initial treating physicians at the ER are located in New Mexico. Also they contend this case should be adjudicated with the Sanchez action to avoid inconsistent judgments.

"When a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Code Civ. Proc., § 410.30, subd. (a).) A state court cannot transfer venue to another state; it must dismiss the action (outright or conditionally) or stay the action. (*Thomson v. Continental Ins. Co.* (1967) 66 Cal.2d 738, 744.) The preference is for stay rather than dismissal. (*Ferreira v. Ferreira* (1973) 9 Ca.3d 824, 841.)

There are two general categories of inconvenient forum factors. They are: (1) whether the alternate forum is a suitable place for trial; and if so, (2) the private interest of the litigants and the interest of the public in retaining the action for trial in California. (*Strangvik v. Shiley* (1991) 54 Cal.3d 744,750.) As to the first factor and a defendant's choice to incorporate or do business in California, there is a presumption of convenience to a defendant that follows from residence in California, but it is not conclusive, and a resident defendant may overcome it by evidence that the alternate jurisdiction is a more convenient place for trial. (*Id.* at p. 756.) As to the second factor, the private interest issues are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof,

the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. (*Id.* at p. 751) The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation. (*Ibid.*) The cumulative connection of the defendant and its conduct within the state is relevant in deciding whether retention of an action would place an undue burden on the courts, a court cannot look only to such circumstances; matters like the complexity of the case, whether it would consume considerable court time, and the condition of the court's docket also are relevant to the issue. (*Id.* at p. 761.)

Moving parties point out that the accident occurred in New Mexico. There is no statute of limitations obstacle to plaintiff pursing the action in New Mexico. Plaintiff's remedies for his causes of action are similar in New Mexico. Plaintiff does not dispute any of these facts. Moving parties therefore conclude that New Mexico is a suitable and appropriate forum.

Plaintiff, on the other hand, contends that New Mexico is not a suitable forum. Plaintiff points out that *Stangvik*, the trial court granted a forum non conveniens motion on several conditions, including that defendants "make past and present employees reasonably available to testify in Sweden and Norway at defendants' cost if so ordered within the discretion of Scandinavian courts". (*Stangvik, supra*, at p. 750, fn. 2.) While moving defendants could (but have not yet) made such an offer, they cannot offer such on behalf of other defendants who are a parties and have not filed any response to the motion. Moving parties do not respond to this in the reply. However, the opposition does not show that New Mexico courts would not have jurisdiction over all defendants, or have the ability to compel them to produce their employees for testimony. New Mexico is an available forum.

"The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses." (*Stangvik, supra,* 54 Cal.3d at p. 751.)

Moving parties contend that access to sources of proof favors granting the motion, as the border patrol agents who witnessed the collision are there, Lakhrvir Singh was cited for violating multiple New Mexico Statutes, plaintiff was treated for his injuries at Mountain View Regional Medical Center in Las Cruces, New Mexico. Additionally, the tow truck provider is located in New Mexico. Moving parties contend that the inability to compel live testimony from these critical witnesses would severely prejudice the parties' ability to present their cases effectively at trial.

Responding to these points, plaintiff points out that with the exception of a few hours' treatment and observation at the hospital in New Mexico on the date of incident (he arrived at 9:43 pm and was discharged at 11:06 pm), plaintiff received three years of extensive medical treatment occurred in California. Even if these California medical witnesses could be persuaded to voluntarily appear in New Mexico, the logistics and

costs of presenting busy doctors' testimony in a distant forum would be excessive. Moving defendants have not sought to depose any of the emergency room physicians.

Plaintiff has deposed the sheriff's deputies, and preserved their videorecorded testimony for trial. Moving parties were represented at the depositions and asked no questions. (Ernst Decl., ¶ 31.) Plaintiff has attempted to depose the border patrol agents, but the U.S. Government has obstructed any deposition. Moving parties have made no effort to obtain testimony from these agents. (Ernst Decl., ¶ 32.) Nor have they sought to depose the tow truck driver. (Ernst Decl., ¶ 33.) The moving papers recognize that deposition testimony from these New Mexico witnesses could be presented at trial (MPA 6:16-17), yet they have made no effort to secure testimony from any of these witnesses. So while it may be difficult to get these witnesses to California for trial, moving parties' *actions* haven't really shown that they are all that important.

The opposition shows that other key witnesses are located in California, and plaintiff may be prejudiced by having to pursue the action in New Mexico. What training (which plaintiff contends was deficient or non-existent) was provided to driver Lahkrvir Singh occurred at A-1 Truck Driving School. A-1 is a California corporation, with a principal place of business in Fresno. (Pl. Exh. 14.) A-1 has refused to comply with multiple deposition subpoenas in this litigation and will need to be subpoenaed to testify at trial (and likely will need to be compelled to appear). (Ernst Decl., ¶15.) Plaintiff will also present evidence of the driver's falsification of logbooks to conceal his unlawful hours of service. Laddi's drivers (including driver-defendant Lahkrvir Singh) maintained electronic logbooks through TruckX, which has its principal place of business in San Jose, California. (Pl. Exh. 18.) Even if these key witnesses could be persuaded to testify in New Mexico, costs and logistic problems would significantly increase.

There is no showing that court congestion here in California is an issue. To the contrary, this case is ready to proceed to trial in April, while the *Sanchez* action is in its infancy. The *Sanchez* court could stay proceedings pending this action to avoid inconsistent judgments. (*See, St. Paul Fire and Marine Ins. Co. v. AmerisourceBergen Corp.* (2022) 80 Cal.App.5th 1, 5–6.)

Overall, especially in light of the fact that plaintiff and defendants are California residents, and the action simply concerns plaintiff's personal injuries, and given moving parties' failure to take steps thus far to obtain testimony from the New Mexico witnesses, the private interest factors favor denying the motion.

Public interest factors include avoiding the overburdening of local courts, protecting potential jurors from having to decide cases of little concern to the local community, and weighing the competing interests of California and the alternate jurisdiction. (*Stangvik, supra*, 54 Cal.3d at p. 751.)

Moving parties contend that while California has general interest in regulating companies operating in its borders, that interest does not outweigh New Mexico's direct connection to the dispute. Plaintiff alleges in the Complaint that "Defendant, Lakhrvir Singh, violated and was cited for violation of New Mexico Statute §66-7-337 (failure to exercise due care to avoid collision). Defendant, Lakhrvir Singh, also violated New Mexico Statute §66-7-318 (following too closely as is reasonable and prudent, based

upon the speed of other vehicles, traffic conditions, and highway conditions) and New Mexico Statute §66-7-301 (speed controlled so as to avoid collusion and to protect persons in safety zones)." (Complaint Attach. GN-2.) However, the two causes of action are for simple negligence. And there is no showing that these statutes apply any different standard than the general duty to act with reasonable care to avoid foreseeable harm to others. New Mexico has an interest in enforcing its statutes, and may do so in criminal court. In this case plaintiff and all defendants are California residents, and plaintiff's claim and rights can easily be enforced through this personal injury action in California. The jury can easily be informed of any applicable New Mexico statutes that defendants may have violated.

Plaintiff then goes on to argue that the motion is untimely because moving defendants appeared in this action in July 2023, and filed the motion nearly a year-and-a-half later on 12/6/24. (See *Roulier v. Cannondale* (2002) 101 Cal.App.4th 1180, 1187-90 [balancing favored a California forum where defendant delayed nine months and participated in discovery before making a motion, even though the case involved a Swiss plaintiff, injured and treated entirely in Switzer-land].) However, it does not appear that delay alone is sufficient grounds to deny the motion. "A party abuses the discovery process when it takes advantage of California's laws and legal processes to propound discovery beyond the scope of establishing the grounds for a forum non conveniens motion and then, after getting its discovery, asserts California is an inconvenient forum." (*Martinez v. Ford Motor Co.* (2010) 185 Cal.App.4th 9, 18.) While moving parties did delay in filing the motion, and participated in discovery, there is no showing or argument that in their activities prior to filing the motion they took advantage of California's laws and legal process beyond what was necessary to make the instant motion.

Moreover, "[u]nder [Code of Civil Procedure section 410.30,] subdivision (b), a defendant who has generally appeared may make a forum non conveniens motion *at any time, not only on or before the last day to plead*." (*Global Financial Distributors Inc. v. Superior Court* (2019) 35 Cal.App.5th 179, 188, emphasis added.) There is no showing of prejudice or that moving parties improperly took advantage of the California forum before filing the motion.

The court intends to deny the motion, but not based on the untimeliness argument.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 1/16/2025.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Dean Vollhardt v. Jaone Luanglath***
Superior Court Case No. 24CECG02207

Hearing Date: January 22, 2025 (Dept. 501)

Motion: by Loya Casualty Insurance to Intervene

Tentative Ruling:

To grant the motion by Loya Casualty Insurance for leave to intervene. (Code Civ. Proc. § 387.) Intervenor is to file its Answer in Intervention within 10 days of the clerk's services of the minute order and serve it on all parties.

Explanation:

Legal Standard

A nonparty shall petition the court for leave to intervene by noticed motion and shall include a copy of the proposed complaint in intervention or answer in intervention and set forth the grounds upon which intervention rests. (Code Civ. Proc. § 387, subd. (c).) The court shall, upon timely application, permit a nonparty to intervene in the action or proceeding if either (1) a provision of law confers an unconditional right to intervene, or (2) the person seeking intervention claims an interest relating the subject of the action and disposition of the action may impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by one or more of the existing parties. (*Id*., subd. (d).)

The court has discretion to grant permissive intervention where the nonparty has a direct and immediate interest in the litigation, the intervention will not enlarge the issues in the case, and the reasons for intervention outweigh any opposition by the existing parties. (See Code Civ. Proc., § 387; *Truck Ins. Exchange v. Superior Court (Transco Syndicate No. 1)* (1997) 60 Cal.App.4th 342, 346; *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383, 386.)

An insurer's interest in the litigation arises from Insurance Code section 11580 which articulates that judgment creditors may proceed directly against any liability insurance covering the defendant and obtain satisfaction of any judgment, up to the policy limits. (*Reliance Ins. Co. v. Superior Court, supra*, 84 Cal.App.4th 383, 386; *Western Heritage Ins. Co. v. Superior Court* (2011) 199 Cal.App.4th 1196, 1204-1205.) The exposure to direct liability for the insurer has been viewed as providing a sufficient basis for intervention. (*Western Heritage Ins. Co. v. Superior Court, supra*, 199 Cal.App.4th 1196, 1205.)

Application

Here, Loya Casualty Insurance ("Loya") has a sufficient interest in the litigation because it is exposed to direct liability as the insurer of defendant Jaone Luanglath. (Harvey Decl., ¶ 4.) The parties do not disagree that an insurer should be allowed to intervene when the insurer may be required to satisfy any judgment entered against the insured and when such intervention will not enlarge the issues. (See Opp., 3:16-18.) Case law supports an insurer's right to intervene when necessary to protect the insurer's own interests because it may be obligated to pay any judgment rendered against its insured. (See *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383.)

Plaintiff Dean Allen Vollhardt ("plaintiff") focuses his opposition on the timeliness of the instant motion. He argues that Loya "knew or should have known of the inability to locate their insured driver back when the suit was originally filed." (Opp., 4:6-7) He also argues that plaintiff was not made aware that the insured driver was unable to be located until default was entered on September 11, 2024. (*Id*., 4:17-19.) Plaintiff suggests that the "lapse of time" between May and October renders the motion untimely and that "Loya should be bound by the Judgement [*sic*] against it." (*Id*., 6:1-3.)

Timeliness of the motion to intervene is determined by the totality of the circumstances, with a focus on three primary factors: (a) the stage of the proceedings; (b) the prejudice to other parties from the delay in seeking to intervene; and (c) the reason for the delay. (*Crestwood Behavioral Health, Inc. v. Lacy* (2021) 70 Cal.App.5th 560, 574.) Prejudice to the existing parties from the delay is the most important consideration in determining whether the motion is timely. (*Ibid*.) Timeliness is a question of reasonableness; whether the right to intervene was asserted within a reasonable time is measured not from the date the intervenors knew about the litigation but, rather, from the date the intervenors knew or should have known their interests in the litigation were not being adequately represented. (*Ziani Homeowners Assn. v. Brookfield Ziani LLC* (2015) 243 Cal.App.4th 274, 282.)

First, it would be appropriate to intervene at this stage of the proceedings because default was entered against the defendant, who no longer can represent her own interests let alone those of Loya, who could become obligated to pay any judgment rendered against its insured. Loya seeks leave to intervene to protect its own interests.

Second, plaintiff does not describe how it would prejudice him to allow Loya's intervention. Plaintiff only argues that it would be a "waste of judicial economy." (Opp., 5:14.)

Third, Loya argues that since it was assigned the case, it has attempted to contact defendant unsuccessfully. Loya states that the attorney assigned to the case "attempted to contact [defendant] and, despite exhaustive efforts, including several phone calls to her last known phone number, contact with her relative, and hiring a private investigator," was unable to locate her. (Harvey Decl., ¶ 2.)

The action was filed on May 24, 2024. Approximately five months elapsed from the date of filing to the date the motion was filed on October 15, 2024. In that time, defendant was served on May 30, 2024, and had 30 days to respond to the suit.

Defendant's default was entered September 11, 2024, after which she could no longer proffer a defense. Since a "reasonable time" is measured from the date the intervenors knew or should have known their interests in the litigation were not being adequately represented (*Ziani Homeowners Assn. v. Brookfield Ziani LLC, supra,* 243 Cal.App.4th 274, 282), the procedural history of this action demonstrates this couldn't have been more than a few months. This is not an unreasonable amount of time.

The court, in its discretion, intends to allow intervention by the insurer.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 1/17/2025.
(Judge's initials) (Date)