

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIFTH APPELLATE DISTRICT

CREDITORS ADJUSTMENT BUREAU, INC.,

Plaintiff and Respondent,

v.

BARRY HALAJIAN,

Defendant and Appellant.

F090331

(Super. Ct. No. 22CECG00386)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Kristi Culver Kapetan, Judge.

Barry Halajian, in pro. per., for Defendant and Appellant.

Law Offices of Kenneth J. Freed, Kenneth J. Freed, Tiffanie Brown and George V. Aposhian, for Plaintiff and Respondent.

-ooOoo-

Defendant and appellant Barry Halajian (appellant), proceeding in pro. per., appeals the trial court's entry of a default judgment against him in favor of respondent Creditors Adjustment Bureau, Inc. Appellant broadly contends the default should have been set aside for excusable neglect, as well as that the default judgment should have been set aside for extrinsic mistake under the court's equity powers. Appellant also asserts arguments in his opening brief concerning the merits of his defenses, his pro. per. status, and respondent's standing to bring suit. Respondent maintains the entry of default and default judgment were properly issued, contends appellant fails to raise a claim of error, argues any appeal of the default judgment is a futile and idle act, and contests that pro. per. litigants are entitled to special treatment.

We affirm.

FACTUAL SUMMARY AND PROCEDURAL HISTORY

On February 4, 2022, plaintiff and respondent Creditors Adjustment Bureau, Inc. (as assignee for the State Compensation Insurance Fund) (respondent) filed a complaint in Fresno County Superior Court alleging appellant Barry Halajian (d.b.a. Industrial Electrical) owed \$86,858.26 pursuant to four workers' compensation insurance policies. The complaint asserted the insurer provided appellant an estimated cost at the start of each policy, based on appellant's assertions at the time. However, when the insurer later attempted to audit appellant's payroll records under the terms of the policies, he refused to comply, resulting in the calculation of an estimated amount that increased the amount appellant owed. Appellant refused to pay.

Respondent served appellant by delivering a copy of the complaint and summons to a mailbox center he used in all correspondence for his insurance policies, then by mailing a second copy to his address; it is the same address appellant used for his various court filings. Appellant did not respond, and the court entered default against him on May 25, 2022. Respondent filed for default judgment on July 12, 2022.

On August 15, 2022, appellant moved to set aside the default under Code of Civil Procedure, section 473, subdivision (b).¹ Therein, he did not contest service but instead asserted he failed to timely respond because of extensive out-of-town travel and a heavy work schedule. On November 10, 2022, the court denied the motion, noting appellant did not dispute he was served, admitted knowledge of the suit, and did not identify defects in service. The court rejected appellant's "press of business" excuse because it is generally not accepted as a ground for relief and noted appellant did "not indicate that he made any effort to contact an attorney or seek an extension of time from [respondent]." The court also noted no grounds to find mistake (legal or factual), inadvertence, or surprise, and instructed that his pro. per. status was not relevant. However, the court stated it would "strongly prefer to grant the motion and allow defendant to defend himself on the merits," and so it denied the motion to vacate without prejudice to allow appellant to file another motion and provide "further explanation or facts showing excusable neglect."

On January 5, 2023, appellant moved to "vacate default judgment ... for excusable neglect pursuant to ... [s]ection 473, [subdivision] (b)." Therein, appellant asserted he had an out-of-town construction project, 90 minutes from Fresno, that "required [his] personal attention between January of 2022 through early April of 2022." Therefore, appellant contended he "was unable to prepare an answer to the complaint within the time required by the Code of Civil Procedure in California because of extensive out of town travel and a heavy workload." He stated in a declaration that he "work[s] out of town most of the time (three to seven days a week) ..., many (12-15) hours in a day," and declared that "[s]ometimes I do not check my mail for a few days because of out of town business." Appellant dedicated the majority of his filing to the merits of his defenses.

On May 25, 2023, the court construed appellant's filing as a second motion to set aside the default and denied relief with prejudice for a lack of excusable neglect. The

¹ Undesignated statutory citations are to the Code of Civil Procedure.

court restated its findings from the November 22 order, including that a “press of business” excuse and a decision to proceed without an attorney would not qualify as excusable neglect. The court then stated:

“Unfortunately, [appellant] ... has not provided further explanation or facts sufficient to demonstrate that his neglect was excusable. Instead, the focus of [his] motion is on the underlying merits of his defense ... [,] [which are] not relevant to the question of whether or not [his] neglect to timely respond to the summons and complaint was excusable.”

The court noted appellant only devoted a small portion of his motion to addressing the default, doubling down on his “press of business” excuse. Despite the “remedial” and “liberal” policies behind section 473, the court rejected appellant’s request to vacate the default. Appellant requested reconsideration, but this too was denied.

The court entered a default judgment against appellant on January 13, 2025. On March 7, 2025, appellant moved to vacate the default judgment, citing in the header the court’s “authorit[y] under equitable grounds” and citing section 473, subdivision (b) “for extrinsic mistake and excusable neglect and fraud.” Therein, he asserted he did not receive notice of the request for entry of the default judgment; the default judgment and entry of default should be vacated, and the court should allow him to file his answer; his defenses in the case are otherwise meritorious; he proceeds without counsel and should be granted leniency; and respondent lacks standing to sue.

The court denied appellant’s motion to vacate on May 6, 2025: (1) noting appellant failed to attach a copy of his proposed answer to the motion; (2) stating notice of the default judgment on appellant was not required because he was in default and so no longer an active party; (3) finding he presented no evidence to support his claims that he paid his premiums; and (4) finding appellant did not make a substantially strong showing of excusable neglect because he provided no additional information why he failed to answer the complaint. Appellant moved for reconsideration on May 14, 2025, which was denied on July 15, 2025.

APPELLATE PROCEDURAL HISTORY

On August 14, 2025, appellant filed a notice of appeal, checking the box that he was appealing from a default judgment. Thereafter, the court notified appellant that he failed to file his civil information statement (CCIS) and failed to pay the filing fee. Appellant's fees were waived upon his request, but he never filed his CCIS. Later, appellant failed to timely file his opening brief and reply brief, only doing so after a warning and with the court's leave.²

Respondent twice moved to dismiss, arguing appellant failed to timely appeal; failed to follow multiple appellate rules; failed to raise a claim of reversible error or otherwise articulate any pertinent legal argument in his brief; has appealed solely to delay enforcement of the judgment; and has sought a remedy that would be an "idle act." Appellant did not oppose the first motion but did so on the second. The court rejected both of respondent's motions, finding appellant's notice of appeal sufficiently cited the default judgment, noting the policy in favor of decisions on the merits and noting the delay in enforcement was partly borne by respondent. The court informed respondent that it could raise its "futile act" argument in its merits brief.

² On October 9, 2026, appellant filed a document entitled "Appellant[']s Request for Mandatory Judicial Notice." This document presents eight arguments that are either new or elaborate on matters appellant previously raised. Thus, the document is akin to a supplemental brief, which is not permitted. (Cal. Rules of Court, rule 8.200(a)(4).) Further, the materials submitted are not relevant to any issue on appeal. (*Hiser v. Bell Helicopter Textron Inc.* (2003) 111 Cal.App.4th 640, 655 [appellate courts generally "decline to decide questions not necessary to the decision"]; *People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, fn. 2 [any matter to be judicially noticed must be relevant to a material issue].) Appellant's request is denied.

DISCUSSION

I. Relief from the Entry of Default and Default Judgment

Respondent has asserted that the appeal should be dismissed or narrowed because it is, at times, difficult to determine which orders appellant appeals from and what arguments he raises in support of his appeal. (See *Filbin v. Fitzgerald* (2012) 211 Cal. App.4th 154, 173, [policy of liberal construction of the notice of appeal “does not apply if the notice is so specific it cannot be read as reaching a judgment or order not mentioned at all”].) Further, respondent argues that even if we assume appellant appeals entry of the default judgment, resolution in his favor would be “an idle act” because the entry of default would still stand. (See *Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 273; *Howard Greer Custom Originals v. Capritti* (1950) 35 Cal.2d 886, 889 [“ ‘If the judgment were vacated it would be the duty of the court immediately to render another judgment of like effect, and the defendants, still being in default, could not be heard in opposition thereto’ ”].)

The court agrees appellant’s arguments in briefing are at times difficult to parse. However, in his notice of appeal and briefing, appellant has sufficiently cited the entry of default and default judgment, as well as the trial court’s orders denying his motions for relief thereon under section 473 for excusable neglect and under the court’s equity powers for extrinsic mistake and fraud. Thus, we construe appellant’s appeal as reaching these issues and reject the “idle act” arguments from respondent. (*Airline Transport Carriers, Inc. v. Batchelor* (1951) 102 Cal.App.2d 241, 244 [construing scope of appeal of default judgment to include arguments concerning the entry of default, given that “ ‘the terms of said motion and the contents of the documents attached thereto adequately apprised [the] plaintiff that [the] defendants were seeking to obtain complete relief under section 473 from the effect of their default’ ”]; see also California Rules of Court, rule 8.100(a)(2) [“[N]otice of appeal must be liberally construed”].)

A. Basic Principles

Subdivision (b) of section 473 provides both mandatory and discretionary relief from judgments and dismissals when certain requirements are met. This appeal involves the discretionary relief provision, which states that a “[t]he court may, upon any terms as may be just, relieve a party or the party’s legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party’s mistake, inadvertence, surprise, or excusable neglect.” (§ 473, subd. (b).) Because the issue turns on the trial court’s discretion, we review the trial court’s orders denying relief under an abuse of discretion standard. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257 (*Zamora*).) The party moving for relief carries the burden to show a basis for relief. (*Id.* at p. 258.) “ ‘[I]t is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered.’ ” (*State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 610 (*State Farm*).) However, the trial court’s discretion is “not unlimited,” is to be “ ‘ ‘ ‘exercised in conformity with the spirit of the law,’ ” ’ ” and “must serve, rather than impede, the ends of substantial justice.” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 (*Elston*).)

Regarding requests for relief, the “spirit of the law” refers to the underlying public policies served by section 473, which requires balancing of competing policies: the preference for deciding disputes on their merits rather than procedural irregularities; the deference given a trial court’s exercise of discretionary authority; the judicial efficiency and certainty that results from the enforcement of procedural rules; and the elimination of delays in civil proceedings. (*Elston, supra*, 38 Cal.3d at p. 233; see *McClain v. Kissler* (2019) 39 Cal.App.5th 399, 405.) Courts have long held that “any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.” (*Elston, supra*, 38 Cal.3d at p. 233 [noting that orders denying relief from default are subjected to more careful scrutiny than orders granting such relief].) In such instances, only “ ‘very

slight evidence’ ” is required to obtain relief. (*Ibid.*) However, this does not mean that any circumstance can qualify to create doubt or satisfy the “ ‘very slight evidence’ ” standard. (See *ibid.* [“Unless inexcusable neglect is clear, the policy favoring trial on the merits prevails”]; *Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206 [“ ‘It is the duty of every party desiring to resist an action or to participate in a judicial proceeding to take timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment’ ”]; *Pierson v. Fischer* (1955) 131 Cal.App.2d 208, 212 [statute providing for relief from default does not require relief in all cases, but is addressed “to the judicial discretion of the trial court”].)

Appellant also cited the trial court’s equitable power to vacate a default judgment or order. “[E]ven where relief is no longer available under statutory provisions, a trial court generally retains the inherent power to vacate a default judgment or order on equitable grounds where a party establishes that the judgment or order ... resulted from extrinsic fraud or mistake.” (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1228.) But inherent equitable power is available only if the moving party makes a minimum showing of entitlement under a “stringent three-pronged test.” (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 981–982 (*Rappleyea*).) This test is: “ ‘(1) a meritorious defense; (2) a satisfactory excuse for not presenting a defense in the first place; and (3) diligence in seeking to set aside the [order] once discovered.’ ” (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1025 (*Pittman*).) As with a section 473 motion, a moving party bears the burden of proving he or she is entitled to equitable relief. (*Rodriguez v. Cho* (2015) 236 Cal.App.4th 742, 752.)

B. Analysis

Here, we collapse into a single analysis appellant’s arguments about the trial court’s denial of his motion to lift the entry of default under section 473 and its denial of his request to set aside the default judgment on equity grounds. This is because both inquiries turn on appellant’s neglect in failing to answer the complaint in 2022.

In determining whether appellant's failure to answer was excusable, "the court inquires whether "a reasonably prudent person under the same or similar circumstances" might have made the same error." ' ' " (*Zamora, supra*, 28 Cal.4th at p. 258.) "[T]he moving party must present a reasonable excuse." (*Davis v. Thayer* (1980) 113 Cal.App.3d 892, 905.) What qualifies as excusable neglect depends on the facts of each case. (*Pearson v. Continental Airlines* (1970) 11 Cal.App.3d 613, 617.) However, courts have long held that the "press of business" does not constitute excusable neglect. (See *Robbins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th 313, 319; *Phillips v. Cleaver* (1948) 89 Cal.App.2d 253, 255; *Willett v. Schmeister Mfg. Co.* (1926) 80 Cal.App. 337, 339–340 [accepting "press of business" as excuse "would be to discourage diligence ... and establish a precedent that might lead to vexatious delays"].) In *Elston, supra*, even though our Supreme Court set forth a "very slight evidence" standard, it reminded that any assertion from the appellant that he "was busy with other matters during the relevant period" would not have constituted excusable neglect. (38 Cal.3d at p. 234 (citing 5 Witkin, Cal. Procedure (2d ed. 1971) Attack on Judgment in Trial Court, § 139, p. 3714 [press of business standing alone insufficient to warrant relief from default].)

Here, appellant only offered a "press of business" excuse to the trial court in his quest to proceed on the merits. Appellant's first motion for relief in August 2022, brought under section 473, subdivision (b), asserted he failed to timely respond because of extensive out-of-town travel and a heavy work schedule. The trial court informed appellant this would not suffice as a ground for relief for excusable neglect, and specifically found appellant did "not indicate that he made any effort to contact an attorney or seek an extension of time from [respondent]." However, the trial court noted it "would strongly prefer to grant the motion and allow [appellant] to defend himself on the merits," and so denied his motion without prejudice so appellant could provide "further explanation or facts showing excusable neglect." Unfortunately for appellant,

his second motion only elaborated further on his out-of-town business activities as his excuse for not answering the complaint. The trial court again rejected his excuse for lack of excusable neglect and did not abuse its discretion in doing so. (*Bellm v. Bellia* (1984) 150 Cal.App.3d 1036, 1038 (*Bellm*) [no abuse of discretion in trial court's finding of no excusable neglect, where the defaulted party failed to answer the complaint because he was "buried over [his] head" in sales orders for the holiday season]; see also *Elston*, *supra*, 38 Cal.3d at p. 234; *Willett v. Schmeister Mfg.*, *supra*, 80 Cal.App. at pp. 339–340.)

As to appellant's request in March 2025 for equitable relief from the default judgment, the trial court was similarly within its discretion to reject his assertions of extrinsic mistake and fraud. As aptly summarized by the court in *Manson, Iver & York v. Black* (2009) 176 Cal.App.4th 36, " 'extrinsic fraud "arises when a party is denied a fair adversary hearing because he has been "deliberately kept in ignorance of the action or proceeding, or in some other way fraudulently prevented from presenting his claim or defense.' " (*Id.* at p. 47.) Extrinsic mistake arises with the "excusable neglect of the defaulting party to appear and present his claim or defense." ' " (*Ibid.*) Critically, relief is unavailable "if the complaining party's negligence permitted the fraud to be practiced or the mistake to occur." (*Ibid.*) Appellant's request for equitable relief merely stated, multiple times, that he previously "supplied the court with ample justification for my lack of response." The trial court noted this assertion in its rejection of equitable relief and was within its discretion to do so. (*Pittman*, *supra*, 20 Cal.App.5th at p. 1025 [reminding the test for equitable relief includes "a satisfactory excuse for not presenting a defense in the first place"].)

In pressing his arguments before this court, appellant cites three cases where the lower court abused its discretion in denying relief from default: *Olivera v. Grace* (1942) 19 Cal.2d 570; *Rappleyea*, *supra*, 8 Cal.4th 975; and *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276 (*Gamet*). These cases are distinguishable for multiple reasons. The party seeking relief in *Olivera v. Grace* "sustained a serious head injury which resulted in

a complete loss of mentality ... [and] rendered her wholly devoid of understanding and incapable of transacting business of any nature,” a fact the opposing party knew of and used to its advantage in moving for dismissal. (*Olivera*, at p. 572.) *Rappleyea* involved a miscommunication from the court clerk, where the defaulting party timely responded to the complaint but failed to pay the full fee for the filing. (*Rappleyea*, at pp. 978–979.) *Gamet* concerned a defaulting party living halfway across the country who was “permanently disabled after a scuba accident shattered a disc in her neck”; whose attorney withdrew during the period where she defaulted (but continued to be served with notices despite new counsel appearing); and who was given “confusing, indeed misleading” orders from the trial court. (*Gamet*, at pp. 1280, 1284.)

Conversely, appellant was properly served with process under section 415.20, subdivision (b). (*Sweeting v. Murat* (2013) 221 Cal.App.4th 507, 513 “[S]ervice at a private or commercial post office box is allowed”). Appellant never contested service, nor did he identify defects in service, and appears to have waited until August 2022 to take *any* action in the case. Appellant has consistently maintained he failed to respond simply because he was busy with business affairs 90 minutes from town. Under these facts, we find no abuse of discretion in the trial court’s denial of his multiple motions for relief under section 473, subdivision (b) or the court’s equitable powers (Compare *Davis v. Thayer*, *supra*, 113 Cal.App.3d at p. 906 [a party who fails to read a complaint is grossly negligent; a party who reads a complaint and disregards its allegations is careless and indifferent: in either case the neglect is inexcusable]; *Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1148–1149 [defendant failed to show excusable neglect where the notice on the face of the summons “was calculated to inform anyone capable of reading English (or Spanish, since the same instruction is set forth in that language) of the necessity of filing an answer with the court”] with *Ellard v. Conway* (2001) 94 Cal.App.4th 540, 544 [finding abuse of discretion for the trial court’s failure to relieve

the defaulting party from default where the statutory procedure for service of process was not followed].)

Appellant also cites *Zamora, supra*, 28 Cal.4th at p. 258 and *Minick v. City of Petaluma* (2016) 3 Cal.App.5th 15 for the proposition that his “failure to pick up the mail for over a month” because of his heavy work schedule was an error or mistake that a “ ‘reasonably prudent person under the same or similar circumstances’ might have made” (*Minick*, at p. 26). These cases are also distinguishable on the facts, as each concerned mistakes made by *counsel* to the detriment of their clients; the statute draws a distinction between counsel’s actions and those of their clients. (See section 473, subd. (b) [providing mandatory relief from judgments and dismissals when based on counsel’s actions]; *Rodriguez v. Brill* (2015) 234 Cal.App.4th 715, 727 [“[Section] 473(b) means relief is not available when the negligence or willful misconduct of the client contributes to the dismissal.”]; see also *Manson, Iver & York v. Black, supra*, 176 Cal.App.4th at p. 47 [noting that equitable relief from judgment is typically denied “if the complaining party’s negligence permitted the fraud to be practiced or the mistake to occur”].) Further, *Zamora* involved a clerical mistake, and *Minick* involved counsel’s serious illness, and each mistake was brought to the court within a *week* of the relevant order. (See *Zamora*, at p. 258; *Minick*, at p. 26.) Conversely, appellant’s failure to answer was based on his own negligence, for which and he only offered a “press of business” excuse, which the trial court had discretion to reject.³ (*Elston, supra*, 38 Cal.3d at p. 234.)

³ Appellant’s assertions in his brief, that he failed to “pick up the mail for over a month,” are in tension with other of his assertions in the record. He does not say which “month” his mailbox went unchecked but has previously stated he was out of town “most of the time (three to seven days a week)” and that “[s]ometimes I do not check my mail for a few days because of out of town business.” He has also stated he was out of town “almost every day” between January and April 2022. Appellant does not detail his actions in May, June, or July, he waited until August to move for relief, and the trial court noted in November 2022 that appellant did “not indicate that he made any effort to contact an attorney or seek an extension of time from [respondent].” The inferences the trial court appear to have drawn are that there may have been days when appellant could

Because appellant has failed to demonstrate neglect that is excusable (*Elston, supra*, 38 Cal.3d at p. 234) or “a satisfactory excuse for not presenting a defense in the first place” (*Pittman, supra*, 20 Cal.App.5th at p. 1025), the trial court did not abuse its discretion in denying appellant’s requests for section 473 and equitable relief. (*Bellm v. Bellia, supra*, 150 Cal.App.3d at p. 1038 [“Denial of relief from the default was perhaps a harsh measure, but Bellia’s showing of excuse was not strong enough to require relief as a matter of law”].) Given this, appellant’s challenges to the court’s order entering default and court’s entry of default judgment fail.

II. Remaining Arguments

Appellant, at times, references his decision to proceed without the assistance of an attorney before the trial court and on appeal. To the extent he argues he should not be held to the same standards as a litigant with attorney assistance, such an argument is rejected. (*County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) [“[The] in propria persona litigant is held to the same restrictive rules of procedure as an attorney”].) Appellant’s arguments concerning the corporate structure of the insurer and respondent’s ability to bring suit on the insurer’s behalf are entirely without merit and are summarily rejected. (See *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 817 [rejecting “rambling and disjointed series of accusations ..., none of which can be considered ‘meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error’ ”].)

In appellant’s reply brief, he generally appears to make arguments concerning the right to due process. No such arguments were made in his opening brief, and so we

have seen to his mail and could have taken other actions—well before August 2022—to defend himself. To the extent appellant requests this court draw different inferences, we are without the authority to do so. (*State Farm, supra*, 90 Cal.App.4th at p. 610 [“[W]hen two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court”].)

decline to address them here. (*People v. Rangel* (2016) 62 Cal.4th 1192, 1218–1219 [“ ‘[I]t is axiomatic that arguments made for the first time in a reply brief will not be entertained because of the unfairness to the other party’ ”].)

DISPOSITION

The judgment is affirmed. Respondent shall recover its costs on appeal not subject to appellant’s fee waiver. (Cal. Rules of Court, rules 8.26(e), 8.278(a)(1)&(2).)

SANDHU, J.

WE CONCUR:

LEVY, Acting P. J.

DETJEN, J.