

CASE #: D075691

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT, DIVISION ONE

Anthony Johnson, an individual,

Petitioner

v.

Superior Court of the State of  
California,  
San Diego County.

Respondent.

David Huffman, an individual,  
Richard Turner, and individual,  
Manuel Altamirano, an individual, and  
David Kinney, an individual,

Real parties in interest.

Case No. \_\_\_\_\_.

San Diego County Superior Court Case No. 37-2019-00002457-CU-BT-CTL  
Hon. Katherine Bacal

**PETITION FOR WRIT OF MANDATE**

Anthony Johnson  
In propria persona  
17287 Griffith Ave.  
Las Vegas, NV 89104  
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flydiversd@gmail.com

**VERIFICATION**

I am the petitioner in this action. All facts alleged in the above petition are true of my own personal knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 16, 2019

Signed:



Anthony Johnson

## MEMORANDUM OF POINTS AND AUTHORITIES

On March 14, 2019, last day for three of the four defendants to answer the complaint, the defendants filed a motion demanding a plaintiff's bond under Code Civ. Proc. (CCP §1030) and a motion for stay pending the bond pursuant to CCP §1030(e), with the hearings set for July 12, 2019. "The only motion 'to stay' an action listed in section 585 subdivision (a), is a motion "to stay or dismiss the action pursuant to [s]ection 418.10" on the ground of inconvenient forum." (*BLASSER v. HUDACK*, No. E067128 (Cal. Ct. App. May 8, 2018) (unpublished).)

The defendants filed no answer or other responsive pleading pursuant to CCP §585(b) was filed prior to the time to answer the complaint, nor had they made any attempt to obtain an extension. "[I]f the defendant has been served, other than by publication, and no answer, demurrer, notice of motion to strike of the character specified in subdivision (f), ... or to stay or dismiss the action pursuant to Section 418.10 [inconvenient forum] ... has been filed with the clerk of the court within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, shall enter the default of the defendant." (Code. Civ. Proc. (CCP) §585(b); underline added.) "No demurrer or answer had been filed, and unless the notice of motion constituted a sufficient appearance under section 585, subdivision 1, Code of Civil Procedure, respondent was entitled to an entry of default." *WA Rose Co. v. Municipal Court*, 176 Cal. App. 2d 67, 1 Cal. Rptr. 49 (Ct. App. 1959). "The clerk merely has to look at the record and see if there is a demurrer or answer or [other permitted response] on file. Seeing none, [the clerk] must enter the default. . . ." (*Ibid.*; *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 534.)

On March 15, 2019, Johnson filed a request for entry of default against defendants David Huffman, Manual Altamirano and David Kinney after they failed

to respond to the complaint more than 30 days after service of summons. (Johnson Decl., Ex. A.)

On March 21, Johnson received a notice from the court clerk rejecting the entry of default because a pending motion for stay was on file. (Johnson Decl., Ex. C.) “A clerk's mandatory duty to enter a default when statutory criteria are met is purely ministerial. (Code Civ. Proc., § 585, subds. (a), (b) & (c)).” *Sanders v. Alcoholics Anonymous World Services, Inc.*, D048596 (Cal. Ct. App. Nov. 14, 2007). Section 585 limits the clerk's authority to enter a default and imposes upon the clerk a ministerial duty to enter a default when the statute's conditions have been met. (See *Bae v. T.D. Service Co. of Arizona*, *supra*, at p. 99 & fn. 7.)

That same day, Johnson contacted the clerk of the superior courts and explained that a motion for stay under Code Civ. Proc. § 1030 is not a responsive pleading under CCP § 585(b), and that the requested default must be entered. “Here, the trial court mistakenly — and apparently without notice to the parties — vacated the default on the ground that defendant's motion to dismiss the action was a responsive pleading which would bar entry of default pursuant to Code of Civil Procedure section 585. But that section does not include such a motion as an appropriate responsive pleading.” *Brown v. Pacific Tel. & Tel. Co.*, 105 Cal. App. 3d 482, 485, 164 Cal. Rptr. 445 (Ct. App. 1980). Later that day, the clerk informed Johnson that the entry of default was denied in error and would be resubmitted to the presiding court. The clerk requested that Johnson refile the original request without the proofs of service attached. Moments later, Johnson refiled the original request along with a supplemental application directing the clerk to enter default that included supported statutes and case references. (Johnson Decl., Ex. F.)

On March 26, 2019, Johnson filed a request for entry of default against the remaining defendant, Richard Turner, after he also failed to respond to the complaint more than 30 days after service of summons. (Johnson Decl., Ex. F.)

Johnson also included the supplement containing the statues and authorizes noted above.

On April 12, 2019, almost 60 days after service of summons, the defendants filed a motion to demurrer and a special motion to strike Johnson's complaint with a hearing date of August 2, 2019.

On April 14, still not having received a response on his requests for entry of default, Johnson filed a request for entry of judgment against all defendants for the amounts stated in the complaint, including a request for dismissal of does, a notice of demand for punitive damages under CCP § 425.11 (Ex. F), and a declaration in support of entry of judgment with attached documents proving the amounts stated. (Johnson Decl., Ex. G.) "The relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115[.]" (CCP § 580(a).)

On April 15, 2019, superior court held a status conference (Johnson Decl., Ex. B) regarding the pending motions. Johnson informed the court that all defendants were in default, so the motions should be moot, but that the default was still pending. Johnson also reiterated that the motions for bond and to stay proceedings under §1030 were not responsive pleadings that would stay an answer or prevent the entry of default.

The court stated that it would not enter default because Johnson did not file a proof of service with his statement of damages. "The plaintiff shall serve the statement upon the defendant pursuant to this section before a default may be taken, if the motion for default judgment includes a request for punitive damages." (CCP § 425.115.) Johnson indicated that he would promptly file the proof of service of the statement of punitive damages the next day.

The court indicated that, nevertheless, if it were to enter the default, it would only set it aside again because there was a motion for demurrer pending, which was filed *before the entry* of default. "[A] plaintiff is entitled to the entry of default on the date he requests it if there is then no responsive pleading by the defendant on file; and . . . the plaintiff cannot be deprived of his right to the entry of a default merely because the clerk erroneously fails to perform his ministerial duty and does not enter it when requested." *Spielberg v. Carlsen*, No. E051167 (Cal. Ct. App. Oct. 13, 2011) (citing *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 142; *See also W. A. Rose Co. v. Municipal Court* (1959) 176 Cal.App.2d 67, 72); *Goddard v. Pollock*, 37 Cal. App. 3d 137, 142, 112 Cal. Rptr. 215 (Ct. App. 1974) (citing *W.A. Rose Co. v. Municipal Court* (1959) 176 Cal. App.2d 67 [1 Cal. Rptr. 49].) Here, the entry of default was delayed by the court for a month while the defendants, informed that Johnson was not fooled by their § 1030(e) motion to stay, prepared and filed a demurrer and motion to strike before the default could be entered. This tactic is nevertheless inadequate because a demurrer may not be filed once the time to answer has expired. (CCP § 430.40.)

The court stated that nothing more was to be done and that she expected Johnson to file his oppositions to the pending motions and would hear arguments at the July 12 and August 2 hearings.

The court has no authority to deprive Johnson his statutory right to entry of default and entry of judgment against the defendants, and Johnson has no other remedy available to him to compel the Superior Court to perform its administrative duty. The defendants' demonstrated that their acts were neither inadvertent mistakes nor excusable neglect, but intended solely to delay their answer believing that Johnson, being self-represented, was unfamiliar with the law. Johnson is justly entitled to the damages stated in his complaint and proven in his request for court judgment.

**PRAYER**

WHEREFORE, Johnson prays that a writ of mandate issue from this court directing the Superior Court to: 1) enter default against all defendants in this matter; and 2) to set a hearing in which it shall “hear the evidence offered by the plaintiff, and shall render judgment in the plaintiff's favor for that relief, not exceeding the amount stated in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115, as appears by the evidence to be just.” (CCP 525(b).)

Date: April 16, 2019

Respectfully Submitted,

By:   
Petitioner in *propria persona*

## CERTIFICATE OF WORD COUNT

I hereby certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed **APPELLANT'S OPENING BRIEF** is produced using a 14-point Roman type font, including footnotes, and contains 1,455 words, which is less than the total of 14,000 words permitted by the rules of court. I relied on the word count of Microsoft Word used to prepare this brief.

Dated: April 16, 2019

  
\_\_\_\_\_  
Anthony Johnson

**PROOF OF SERVICE**

I, Anthony Johnson, declare that:

I am over the age of 18 and am not a party to the foregoing action. I am familiar with the business practice for electronic filing and service through OneLegal and electronic mail, pursuant to which practice I served the foregoing:

- 1. PETITION FOR WRIT OF MANDATE**
- 2. DECLARATION OF ANTHONY JOHNSON AND EXHIBITS IN SUPPORT OF PETITION FOR WRIT OF MANDATE**

by electronic filing and service to the e-mail addresses of parties of interest or their counsel listed below:

Superior Court of the State of  
California, County of San Diego

Case No. 2019-00002457-CU-BT-CTL

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I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on April 16, 2019 at Las Vegas, Nevada.

  
\_\_\_\_\_  
Anthony Johnson