

**Superior Court of the State of California
County of Orange**

**Tentative Rulings
Law and Motion Calendar
Department C23
Honorable David J. Hesseltine**

Hearing Date and Time: July 10, 2025, at 2:00 p.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it is that party's responsibility to provide a court reporter, unless the party has a fee waiver and timely requests a court reporter in advance of the hearing (see link at end of this paragraph for further information). Parties must comply with the Court's policy on the use of privately retained court reporters, which may be found at the following link: [Civil Court Reporter Pooling](#). For additional information regarding court reporter availability, please visit the court's website at [Court Reporter Interpreter Services](#).

Tentative Rulings: The court endeavors to post tentative rulings on the court's website no later than 12:00 noon on the date of the afternoon hearing. Tentative rulings will be posted case by case on a rolling basis as they become available. Jury trials and other ongoing proceedings, however, may prevent the timely posting of tentative rulings, and a tentative ruling may not be posted in every case. Please do not call the department for tentative rulings if one has not been posted in your case.

The court will not entertain a request to continue a hearing or any document filed after the court has posted a tentative ruling.

Submitting on Tentative Rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the courtroom clerk or courtroom attendant by calling (657) 622-5223. Please do not call the department unless **ALL** parties submit on the tentative ruling. If all sides submit on the tentative ruling and advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under California Rules of Court, rule 3.1312.

Non-Appearances: If no one appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The court also may make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C23 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C23 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at

<https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5223 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

NO FILMING, BROADCASTING, PHOTOGRAPHY, OR ELECTRONIC RECORDING IS PERMITTED OF THE VIDEO SESSION PURSUANT TO CALIFORNIA RULES OF COURT, RULE 1.150 AND ORANGE COUNTY SUPERIOR COURT RULE 180.

#	Case Name	Tentative
1.	Padilla v. Sandoval <i>2025-01457161</i>	<p>Before the court is the continued hearing on the motion of attorneys Ernest P. Algorri, Sam S. Soleimany, and Anthony J. Perez to be relieved as counsel of record for plaintiff Jorge Padilla (Plaintiff).</p> <p>The court conducted the original hearing on this motion on May 29, 2025, and continued the hearing to the current date for further evidence confirming Plaintiff's current address. Specifically, the court stated as follows: "In their supporting declarations, counsel check the boxes stating they have been unable to confirm Plaintiff's current address. Counsel, however, then state they hired a private investigator to confirm Plaintiff's current address. Counsel must clearly state in their declarations whether they were or were not able to confirm Plaintiff's address. Counsel also must provide a declaration from the private investigator describing what specific investigation was undertaken and what the specific results were. Counsel lack personal knowledge regarding the investigator's investigation and its results."</p> <p>In connection with the current hearing, counsel has submitted a new declaration and a declaration by the private investigator. The evidence presented establishes counsel have made all reasonable efforts to locate Plaintiff, and the address provided is the</p>

		<p>most recent address for Plaintiff. As such, counsel has made a sufficient showing, and the court will grant the motion with the caveat set forth below.</p> <p>On July 7, 2025, the court conducted a status conference in this matter. The court inquired why this matter was filed as an uninsured motorist case when it is not an uninsured motorist case given there is no insurance company involved. Counsel explained the case is in arbitration pursuant to the agreement of the parties and counsel filed this court case solely to obtain a case number so counsel could move to withdraw.</p> <p>This court may only grant counsel leave to withdraw as counsel of record in a case pending in this court. Accordingly, by granting this motion, the court is relieving counsel in this matter—i.e., case no. 2025-01457161—only. To the extent there is an arbitration pending and counsel seeks to withdraw as counsel of record with that tribunal, then counsel must apply to that tribunal for leave to the extent the tribunal’s rules so provided. Otherwise, counsel must follow all applicable Rules of Professional Responsibility governing termination of an attorney-client relationship by the attorney.</p> <p>Based on the foregoing, the motion is GRANTED, but the order relieving counsel as counsel of record applies only to the proceedings pending in this court, not the proceedings pending before any other tribunal and not as to any representation more generally. Again, it is counsel’s responsibility to comply with all applicable Rules of Professional Responsibility. Finally, the order granting this motion shall not be effective until counsel filed proof of service of the signed order on Plaintiff.</p> <p>Counsel is ordered to give notice of this ruling.</p>
2.	<p>Industrial Court L11, LLC v. Green Rose Green Leaf Care, Inc.</p> <p><i>2022-01291147</i></p>	<p>Before the court is the continued hearing on the motion to be relieved as counsel of record for plaintiff Industrial Court L11, LLC (Plaintiff) filed by attorney G. Andrew Slater.</p> <p>On June 5, 2025, the court conducted the original hearing on this motion. At that time, the court continued the hearing to today’s date because counsel failed to file a proof of service showing the motion was served on Plaintiff.</p> <p>Following the hearing, counsel filed a proof of service showing the motion, supporting papers, and notice of</p>

		<p>the court's June 5th ruling were served on Plaintiff and opposing counsel. As stated in the prior ruling, counsel has stated good cause for the motion once proper service is shown.</p> <p>Based on the foregoing, the motion is GRANTED. The order relieving counsel is effective upon counsel filing with the court a proof of service showing the signed order granting the motion has been served on Plaintiff. Counsel shall remain counsel of record until that time.</p> <p>Finally, given Plaintiff is an entity that may only appear through counsel, the court hereby sets a status conference for <u>Monday, September 15, 2025, at 9:30 a.m., in Department C23</u>, to address Plaintiff's efforts to obtain new counsel. Plaintiff is ordered to appear for that conference, and Plaintiff is cautioned that its failure to obtain counsel may result in the dismissal of this case.</p> <p>Counsel is ordered to serve notice of this ruling on Plaintiff and all parties.</p>
3.	<p>Copenbarger v. Morris Cerullo World Evangelism</p> <p><i>2012-00605730</i></p>	<p>OFF CALENDAR as moot based on substitution of attorney forms filed on June 24 and 25, 2025.</p>
4.	<p>Sunshine Mall v. Cho</p> <p><i>2025-01462558</i></p>	<p>CONTINUED TO AUGUST --, 2025, AT 2:00 P.M., IN DEPARTMENT C23 on the court's own motion.</p> <p>Briefing is closed, and no further briefing will be considered.</p>
5.	<p>Duckor Metzger & Wynee, APLC v. El Capitan Advisors, Inc.</p> <p><i>2025-01475911</i></p>	<p>Before the court is the continued hearing on the petition to confirm arbitration award filed by petitioner Duckor Metzger & Wynne, APLC (Petitioner) seeking to confirm the arbitration award in Petitioner's favor and against respondents El Capitan Advisors, Inc. and Andrew Nash (collectively, Respondents). As set forth below, the petition is GRANTED.</p> <p>The court first heard the petition on June 5, 2025, and continued the hearing to today's date for Petitioner to provide a copy of the underlying arbitration agreement. Specifically, the court ruled as follows:</p> <p>"This case arises from an arbitration conducted by Judge Nancy Wieben Stock (Ret.) on February 18,</p>

		<p>2025. A final Award of \$201,706.50 was issued on February 18, 2025, by Judge Wieben Stock in Petitioner's favor and against Respondents.</p> <p>"A petition to confirm an arbitration award must be filed within four years from the date of service of a signed copy of the arbitration award upon the petitioner and at least 10 days after service of the award upon the petitioner. (Code Civ. Proc., §§ 1288, 1288.4.)</p> <p>"A petition to confirm an arbitration award must (1) set forth the substance of or attach a copy of the arbitration agreement; (2) set forth the name of the arbitrators; and (3) set forth or attach a copy of the award and the written opinion of the arbitrators, if any. (Code Civ. Proc., § 1285.4.)</p> <p>"Here, the petition sets forth the name of the arbitrator and attaches a copy of the Final Award. Petitioner, however, has not 'set forth the substance of or have attached a copy of the agreement to arbitrate.' Although the final award states 'The agreement to arbitrate arises from the Dispute Resolution Agreement, dated September 19, 2023, and attached to the parties' Fee Agreement,' the agreement is not attached to the instant Petition.</p> <p>"Accordingly, the hearing on the Petition is CONTINUED as stated above for Petitioner to file and serve a copy of the arbitration agreement upon which the arbitration was based. The agreement must be properly authenticated and submitted with an appropriate declaration. Petitioner is ordered to file a copy of the arbitration agreement at least 14 days before the continued hearing."</p> <p>Petitioner complied with the court's order and has provided a copy of the underlying arbitration agreement. Accordingly, the court finds the petition now satisfies the requirements of Code of Civil Procedure section 1285.4, and Respondents have not filed any petition or vacate or correct the award, nor have they opposed this petition.</p> <p>Based on the foregoing, the petition is GRANTED, and the arbitration award is hereby confirmed. Petitioner may submit a proposed judgment.</p>
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		Petitioner is ordered to give notice of this ruling.
6.	MacGregor— Name Change 2025-01480873	<p>Before the court is the motion to seal court records filed by Petitioner MacGregor. As set forth below, the motion is GRANTED.</p> <p>Petitioner seeks to have the entire court file sealed under California Rules of Court, rule 2.550 and 2.551, as well as Code of Civil Procedure section 1277(b)(5). California Rules of Court, rule 2.550(d) states, "The court may order that a record be filed under seal only if it expressly finds facts that establish: [¶] (1) There exists an overriding interest that overcomes the right of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to achieve the overriding interest."</p> <p>Code of Civil Procedure section 1277(b)(5) states, a petitioner for a name change "may request that the court file the petition and any other papers associated with the proceeding under seal. The court may consider the request at the same time as the petition for name change" if it finds the same five factors listed in California Rules of Court, rule 2.550(d).</p> <p>As stated in <i>In re MT</i> (2024) 106 Cal.App.5th 322, 341, "A transgender person . . . has a privacy interest in concealing their transgender identity." That case further concluded, as the legislature has not applied confidentiality to records of all transgender adults as it has for juveniles, the requirements of sealing records for a transgender adult must be addressed by the courts on a case-by-case basis. (<i>Id.</i> at p. 342.)</p> <p>Here, Petitioner has an overriding privacy interest in concealing their transgender identity. Petitioner asserts based on their work for a Texas state agency and residency in Texas amidst increasingly hostile legislation towards transgender individuals, they cannot safely disclose their transgender status. Petitioner further assert the public availability of these records would put Petitioner at risk of harassment, discrimination, and possible political targeting. There is evidence Petitioner's privacy rights would be prejudiced if the record is not sealed, and Petitioner</p>

		<p>would face a very real risk of discrimination and harassment in their home state.</p> <p>Per Code of Civil Procedure section 1277(b)(5), the court may seal the petition and any other papers associated with the name change. As determined by <i>In re MT</i>, sealing the entire records is appropriate here, and is as narrowly tailored as possible. (106 Cal.App.5th at pp. 346-347.) There is no less restrictive means to achieve the overriding interest, as the availability of the public records at all would subject Petitioner to possible harm. Accordingly, the motion to seal is GRANTED.</p> <p>Plaintiff to give notice.</p>
7	<p>In re 33201 Palo Alto Street, Dana Point, CA 92629</p> <p>2025-01476740</p>	<p>CONTINUED TO AUGUST --, 2025, AT 2:00 P.M., IN DEPARTMENT C23 on the court's own motion.</p> <p>Briefing is closed, and no further briefing will be considered.</p>
8.	<p>IM Painting, Inc. v. Jack Mitchell Construction, Inc.</p> <p>2022-01279760</p>	<p>Before the court is the motion of defendants Jack Mitchell Construction, Inc. (JMC), Jack Mitchell (Jack), and Lorie Mitchell (Lorie; collectively, Defendants) to set aside a default and default judgment entered against them. As set forth below, the motion is DENIED.</p> <p>Defendants' motion seeks to vacate the default and default judgment on three distinct legal theories, but their motion seems to merge or conflate the requirements of these theories. Specifically, Defendants apparently seek to vacate the default and default judgment under (1) Code of Civil Procedure section 473.5 based on the alleged lack of actual notice, (2) the court's inherent equitable power to set aside a judgment based on extrinsic fraud or mistake, and (3) Code of Civil Procedure section 473(d) on the alleged ground the judgment is void. Although similar, each of these three theories or grounds have separate requirements. If established, any one of these three grounds would be sufficient to support Defendants' motion.</p> <p><u>Code of Civil Procedure Section 473.5:</u> Where service of summons has not resulted in actual notice to a party in time to defend the action, Code of Civil Procedure section 473.5 empowers the court to grant relief from a default or default judgment. This section is designed to provide relief where there has been proper service of summons (e.g., by substitute service</p>

	<p>or by publication) but defendant nevertheless did not find out about the action in time to defend. (Weil & Brown, Cal. Prac. Guide: Civ Proc. Before Trial (The Rutter Group 2025) ¶5:420.) This ground for relief should be distinguished from relief based on the ground summons was not properly served. In that circumstance relief from default or default judgment should be sought under Code of Civil Procedure section 473(d). (Weil & Brown, Cal. Prac. Guide: Civ Proc. Before Trial (The Rutter Group 2025) ¶5:420.)</p> <p>A defendant moving for relief under section 473.5 must show (1) the defendant timely sought relief under that section, and (2) the lack of actual notice in time to defend was not caused by inexcusable neglect or avoidance of service (<i>Tunis v. Barrow</i> (1986) 184 Cal.App.3d 1069, 1077-1078). To be timely under section 473.5, a defendant must seek relief within a “reasonable time” and in no event later than two years after entry of default judgment or 180 days after service of written notice that such default or default judgment has been entered, whichever comes first. (Code Civ. Proc. § 473.5(a).)</p> <p>Here, the court concludes Defendants are not entitled to relief under section 473.5 because they failed to establish they did not have actual notice in time to defend, let alone that any purported lack of actual notice was not caused by their inexcusable neglect or avoidance of service. Indeed, the court resolves the conflicts in the evidence regarding service in favor of Plaintiff and finds Plaintiff’s evidence more credible.</p> <p>The proofs of service Plaintiff filed show Steve Wynn, a licensed private investigator, personally served Defendants on November 4, 2022. The proofs of service comply with the requirements of Code of Civil Procedure section 417.10(a) and therefore create a rebuttable presumption of service. (<i>M. Lowenstein & Sons, Inc. v. Superior Ct.</i> (1978) 80 Cal.App.3d 762, 770; see also <i>Dill v. Berquist Const. Co., Inc.</i> (1994) 24 Cal.App.4th 1426, 1441-1442.) Accordingly, the burden is on the defendants to show they were not served. (See <i>Tunis v. Barrow</i> (1986) 184 Cal.App.3d 1069, 1080).</p> <p>Defendants deny they were served on November 4, 2022, or at all. Lorie and Jack assert the location at which they were allegedly served on that date was a jobsite for one of their projects, but they were not</p>
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	<p>present at that jobsite on that date. Lorie states she was “in the state of Texas with a family member” (Lorie Decl. ¶9), and Jack states he was “working at a different job site in a different city that day” (Jack Decl. ¶9).</p> <p>Defendants’ declarations, however, are very short on details. Notably absent from the declarations is any corroborating evidence supporting their assertions. For Lorie, there are no documents such as a plane ticket, hotel bill, credit card charge for a purchase while in Texas, or for anything related to the trip. Lorie also fails to provide any details of the trip such as when it began, when it ended, who she was with, or even the city she visited. For Jack, although he says he consulted JMC’s records to determine exactly what he was doing on November 4, 2022, he does not say what he was doing. He does not say what job he was working at, who he was with, or what city he was in. He also does not submit copies of the calendar entries he looked at or any other documents he states he looked at to determine exactly what he did on November 4, 2022.</p> <p>Mr. Wynn declares he retired as an Los Angeles police officers after 22 years of service, he has been a private investigator for 22 years, and he is familiar with the requirements for service of legal process, having done so hundreds of times. He states he gained access to the gated community after identifying himself to the guard and stating he was there to service legal process. He proceeded to the address and found Jack and Lorie in front of the residence by calling out their names. He states one of them acknowledged knowing what the papers were about and inquired how he got into the gated community.</p> <p>Based on the evidence presented, and the court’s credibility determinations relating thereto, the court finds Defendants failed to meet their burden to show they did not have actual notice of the lawsuit in time to defend.</p> <p>Moreover, the court finds Defendants failed to satisfy the timeliness requirement of section 473.5. Although Defendants filed the motion one day before the expiration of the two-year outer time limit (i.e., they filed the motion on May 2, 2025, and the default judgment was entered on May 3, 2023), the court finds Defendants failed to file the motion within a</p>
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	<p>reasonable time, and also failed to file the motion with 180 days after service of written notice of the default or default judgment being entered. The failure to satisfy either of these time limits is sufficient to defeat the motion.</p> <p>Setting aside the court's finding Defendants were served on November 4, 2022, as stated in the proof of service, and focusing solely on Defendants' notice regarding the default judgment, the evidence shows Defendants failed to bring this motion within a reasonable time. The opposition reveals the Contractors State Licensing Board sent Defendants notice on May 15, 2024, that WJC's license was suspended based on the default judgment in this case. Following that notice, starting in June 2024, three different attorneys from three different law firms contacted Plaintiffs' counsel attempt to set aside the default judgment and resolve this case. Lorie herself even sent Plaintiff's counsel an email on June 4, 2024, making a settlement offer. This motion, however, was not brought for another 11 months. Although not necessary to the finding this motion was not brought within a reasonable time, the court nonetheless notes the opposition evidence shows the abstract of judgment was recorded on June 12, 2023, and the Orange County Recorder sends copies of all such documents to the property owners. That would establish knowledge of the default judgment nearly two years before this motion was filed.</p> <p>Separate and apart from the reasonable time limitation, the court also finds Defendants failed to bring this motion within 180 days after service of written notice of the default or default judgment being entered. Notice of the default and notice of entry of the default judgment were mailed to Defendants at Jack and Lorie's home in December 2022, and May 2023. That is more than 180 before this motion was filed on May 2, 2025.</p> <p>Defendants assert they did not receive any of these notices because they do not have a mailbox at their home. Rather, the mailbox assigned to their home is part of a cluster of boxes for some of the residents in their community, but Jack and Lorie state they do not have a key for their mailbox, and therefore do not use it. Instead, they say they have a post office box in Dana Point. Defendants, however, do not present any evidence to show, at the relevant time, they had a</p>
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		<p>mail forwarding request with the post office. The court does not find this excuse credible. Indeed, how easy would it be for a litigant or debtor to avoid obligations if all they had to do was say they do not check the mailbox assigned to their home.</p> <p>Based on the foregoing, the court concludes Defendants failed to establish they are entitled to relief under section 473.5. The request for relief under that section therefore is DENIED.</p> <p><u><i>Inherent, Equitable Powers of the Court:</i></u> Defendants next assert they are entitled to relief based on the court's inherent, equitable power to set aside a judgment on the ground of extrinsic fraud or mistake. To obtain relief under such inherent equitable power, the Defendants must show (1) a meritorious defense; (2) a satisfactory excuse for not presenting a defense to the original action; and (3) diligence in seeking to set aside the default once it was discovered. (<i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975, 982; <i>Kramer v. Traditional Escrow, Inc.</i> (2020) 56 Cal.App.5th 13, 29; <i>Sporn v. Home Depot USA, Inc.</i> (2005) 126 Cal.App.4th 1294, 1301; <i>Moghaddam v. Bone</i> (2006) 142 Cal.App.4th 283, 290-91.)</p> <p>Here, Defendants failed to submit any evidence supporting the merits of any defense to the contract claims. Accordingly, Defendants have failed to satisfy the first of these three elements.</p> <p>As to the Defendants' excuse for not responding to the litigation, they deny they were ever served with the summons and complaint and claim the proof of service to the contrary is fraudulent. As stated above, the court finds Defendants failed to present sufficient, credible evidence to show they were not served on November 4, 2022, and the court resolves the conflict in the evidence regarding that service in Plaintiff's favor. As such, Defendants also failed to establish the second of these three elements.</p> <p>Finally, rather than showing diligence, the evidence the parties presented shows Defendants were not diligent in seeking to set aside the default judgment once discovered. Indeed, the evidence establishes many points in time at which this lawsuit and the default judgment were brought to Defendants' attention before they finally brought this motion. Even the most recent notice is sufficient to show a lack of diligence by Defendants, but when the various notices</p>
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	<p>are considered collectively, it is too difficult to believe the notice of the Contractors State Licensing Board was the first notice Defendants had regarding the default judgment and this lawsuit. [Even assuming that was the first notice that is still nearly a year before this motion and shows a lack of diligence.]</p> <p>More specifically, Plaintiff submits evidence showing, on October 10, 2022, Plaintiff made a claim to Hudson Insurance Company, the bond surety for JMC. (Exh. I to Opp.) In the demand, Plaintiff sought payment of the \$83,626.41 owed on four invoices and a copy of the lawsuit was sent to the bond surety. On November 14, 2022, the bond surety responded to Plaintiff's counsel stating the claim is "disputed by the bond principal." (Exh. J to Opp.) This implies the surety discussed the claim with Defendants prior to November 14, 2022. In the reply, Defendants do not dispute their bond surety contacted them or that Defendants told the bond surety they disputed the claim.</p> <p>Further, as stated above, the evidence shows Defendants were mailed notice of default and entry of the default judgment in December 2022, and May 2023, but took no action. Defendants claim they never check their mailbox because they do not have a key, but as stated, the court does not find that credible.</p> <p>As also stated above, Defendants acknowledge receiving the May 15, 2024 notice of the Contractors State Licensing Board, and although Lorie claims she first learned of the suit in July or August 2024, the evidence shows she attempted to settle the judgment claim on June 4, 2024. (Email att. as Exh. M to Opp.) Overall, the court does not find the Defendants' conduct to have been reasonably diligent.</p> <p>Based on the foregoing, the court finds Defendants have failed to establish any of the three elements necessary to obtain relief under the court's inherent, equitable powers, and therefore Defendants' request for relief under those powers is DENIED.</p> <p><u>Code of Civil Procedure Section 473(d)</u>: Under this code section, and in addition to any other ground for vacating a default judgment, the court has the power to set aside a judgment that is void as a matter of law. Defendants contend the default judgment in this case is void because they were never properly served with</p>
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		<p>the summons and complaint. As stated above, they claim the proof of service stating they were personally served on November 4, 2022, is fraudulent, and they deny ever being served.</p> <p>As stated above, the court resolves the conflict in the evidence regarding whether Defendants were served against Defendants, and finds they failed to show a lack of service. This alone is sufficient to defeat their motion under section 473(d). The court, however, also finds their motion under section 473(d) fails because they did not bring it within a reasonable time.</p> <p>The timing requirements for a motion under section 473(d) were recently discussed in <i>Kremerman v. White</i> (2021) 71 Cal.App.5th 358, 369-370:</p> <p>“‘The court may . . . on motion of either party after notice to the other party, set aside any void judgment or order.’ (§ 473, subd. (d).) Generally, defendants have six months from entry of judgment to move to vacate. (<i>Id.</i>, subd. (b).) But, if ‘the judgment is void on its face, then the six month limit set by section 473 to make other motions to vacate a judgment does not apply.’ [Citation.]</p> <p>“‘A judgment or order is said to be void on its face when the invalidity is apparent upon an inspection of the judgment-roll.’” [Citation.] . . .</p> <p>“To determine ‘whether an order [or judgment] is void for purposes of section 473, subdivision (d), courts distinguish between orders [or judgments] that are void on the face of the record and orders [or judgments] that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence. “This distinction may be important in a particular case because it impacts the procedural mechanism available to attack the judgment [or order], when the judgment [or order] may be attacked, and how the party challenging the judgment [or order] proves that the judgment is void.” [Citation.] A judgment ‘is considered void on its face only when the invalidity is apparent from an inspection of the judgment roll or court record without consideration of extrinsic evidence.’ [Citation.] When a default judgment has been taken, the judgment roll consists of ‘the summons, with the affidavit or proof of service; the complaint; the request for entry of default</p>
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		<p>. . . , and a copy of the judgment.’ [Citation.] If the invalidity can be shown only through consideration of extrinsic evidence, such as declarations or testimony, the order/judgment is not void on its face.”</p> <p>Here, the judgment is not void on its face. There is a proof of service showing Defendants were properly served. Defendants contend that proof is fraudulent and deny they were ever served, but to show that they submit extrinsic evidence thereby showing the judgment is not void on its face.</p> <p>A motion to vacate a judgment on the ground it is void based on extrinsic evidence must be brought within a reasonable time if brought in the lawsuit in which the judgment was entered. (<i>Dill v. Berquist Constr. Co., Inc.</i> (1994) 24 Cal.App.4th 1426, 1444; Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2025) ¶5:493.) As explained in the Weil & Brown treatise, the reasonable diligence requirement does not apply to an independent action attacking the judgment.</p> <p>Here, this motion is brought within the same action, and as explained above, the court finds Defendants failed to bring this motion within a reasonable time, nor did they act with reasonable diligence. As such, their motion under section 473(d) is untimely.</p> <p>Defendants’ motion under 473(d) therefore is DENIED because it is untimely and because Defendants failed to show the judgment is void.</p> <p>For all the foregoing reasons, Defendants’ motion to set aside their defaults and the default judgment is DENIED IN ITS ENTIRETY AND ON ALL GROUNDS.</p> <p>Plaintiff’s counsel is ordered to give notice of this ruling.</p>
9.	<p>In re 2 Camellia, Irvine, CA 92620</p> <p>2025-01476733</p>	<p>Before the court is the petition regarding unresolved claims and deposit of undistributed surplus proceeds of trustee’s sale that petitioner Clear Recon Corp (Petitioner) filed on April 11, 2025. In connection with this petition, the court also has received the claim to surplus funds filed by the State of California Franchise Tax Board (Tax Board).</p>

		<p>The petition is filed under Civil Code section 2924j following a trustee's sale pursuant to a deed of trust that Petitioner conducted on October 17, 2024, regarding the property located at 2 Camellia, Irvine, California 92620 (Property). After paying off the trust deed and all senior liens, Petitioner seeks to deposit the surplus funds of \$1,165,827.12 with the court and be discharged from responsibility for the distribution of those funds because, after due diligence, Petitioner is unable to determine the priority of the written claims it received.</p> <p>The court finds the petition complies with the notice and other requirements of section 2924j, and Petitioner should be allowed to deposit the surplus funds with the court and be discharged. Accordingly, the petition is GRANTED, and Petitioner is ordered to deposit all surplus fund relating to the trustee's sale for the Property with the clerk of the court forthwith. Upon deposit of the funds with the clerk of the court, Petitioner shall be discharged of further responsibility for the distribution of the sale proceeds as provided in Civil Code section 2924j(c).</p> <p>Upon deposit with the clerk of the court, the surplus funds shall stay on deposit with the clerk until such time as a claim to the funds is duly asserted, or until the funds escheat to the court. (Gov. Code, § 68084.1(a) ["Except as otherwise provided by law, any money, excluding restitution to victims, that has been deposited with a superior court, or that a superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for three years shall become the property of the superior court if, after published notice pursuant to this section, the money is not claimed or no verified complaint is filed and served"]; Code Civ. Proc. § 1502(a)(3) ["This chapter does not apply to any of the following: [¶] . . . [¶] (3) Any property in the official custody of a court if the property may be transferred to the Trial Court Operations Fund under Section 68084.1 of the Government Code"].)</p> <p>The court acknowledges the claim to a portion of the surplus funds the Tax Board filed, but the court cannot grant that claim at this time because the funds have not yet been deposited with the court and the clerk has not yet given notice to all interested parties of a hearing to determine any and all claims to the funds.</p>
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		<p>The second paragraph of Civil Code section 2924j(d) states, "Within 90 days <u>after deposit</u> with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, <u>the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein.</u>" (Underlining added.)</p> <p>The court hereby sets a hearing to consider the Tax Board's claim and any other claims to the surplus funds to be deposited with the court for Thursday, September 11, 2025, at 2:00 p.m., in Department C23. The clerk of the court is directed to give notice of this hearing by first class mail to all claimants identified in attachment 8 to the petition. Specifically, notice should be given to:</p> <p>Qiujie Cheng 2 Camellia Irvine, CA 92620</p> <p>Sen Yang 2 Camellia Irvine, CA 92620</p> <p>State of California Franchise Tax Board C/O Special Procedures Section P.O. Box 2952 Sacramento, CA 95812-2952</p> <p>Any claims to the surplus funds must be filed with the court and served on the foregoing claimants at least 15 days before the foregoing hearing date. The court acknowledges the claim the Tax Board has filed, and the Tax Board may either stand on its existing claim or file an updated claim in accordance with the foregoing schedule.</p> <p>Petitioner's counsel is ordered to give notice of this ruling.</p>
10.	<p>In re 4 Dorado, Ranch Santa Margarita 2025-01477558</p>	<p>Before the court is the petition regarding unresolved claims and deposit of undistributed surplus proceeds of trustee's sale that petitioner Quality Loan Service Corp. (Petitioner) filed on April 22, 2025. In connection with this petition, the court also has received (1) the claim and response filed by claimant Sianne Dewi Fitzmorris (Sianne) on May 20, 2025, and</p>

	<p>(2) the claim filed by claimant Gary Fitzmorris (Gary) on June 25, 2025.</p> <p>The petition is filed under Civil Code section 2924j following a trustee's sale pursuant to a deed of trust that Petitioner conducted on September 23, 2024, regarding the property located at 4 Dorado, Rancho Santa Margarita, California 92688 (Property). After paying off the trust deed and all senior liens, Petitioner states the amount of surplus proceeds from the sale is \$224,674.08. Petitioner served written notice to all potential claimants regarding these funds and received six claims.</p> <p>In addition to the claims of Sianne and Gary, Petitioner received claims from the State Board of Equalization, Orange County Treasurer-Tax Collector, Belflora Maintenance Corp., and Rancho Santa Margarita Landscape and Recreation Corp. Petitioner was able to determine the priority and amount of all claims except those filed by Sianne and Gary. Petitioner paid a total of \$80,168.04 to the other four claimants. Therefore, after paying all fees and costs, the total remaining amount of surplus funds is \$137,867.87. Petitioner states, after due diligence, it is not able to determine the priority or resolve the conflict between the competing claims of Sianne and Gary as to these surplus funds, and therefore Petitioner seeks to deposit the funds with the court and be discharged from further responsibility regarding their distribution.</p> <p>The court finds the petition complies with the notice and other requirements of section 2924j, and Petitioner should be allowed to deposit the surplus funds with the court and be discharged. Accordingly, the petition is GRANTED, and Petitioner is ordered to deposit all surplus fund relating to the trustee's sale for the Property with the clerk of the court forthwith. Upon deposit of the funds with the clerk of the court, Petitioner shall be discharged of further responsibility for the distribution of the sale proceeds as provided in Civil Code section 2924j(c).</p> <p>Upon deposit with the clerk of the court, the surplus funds shall stay on deposit with the clerk until such time as a claim to the funds is duly asserted, or until the funds escheat to the court. (Gov. Code, § 68084.1(a) ["Except as otherwise provided by law, any money, excluding restitution to victims, that has been deposited with a superior court, or that a</p>
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	<p>superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for three years shall become the property of the superior court if, after published notice pursuant to this section, the money is not claimed or no verified complaint is filed and served"]; Code Civ. Proc. § 1502(a)(3) ["This chapter does not apply to any of the following: [¶] . . . [¶] (3) Any property in the official custody of a court if the property may be transferred to the Trial Court Operations Fund under Section 68084.1 of the Government Code"].)</p> <p>The court acknowledges the claims Sianne and Gary filed regarding the surplus funds, but the court cannot grant either of those claims at this time because the funds have not yet been deposited with the court and the clerk has not yet given notice to all interested parties of a hearing to determine any and all claims to the funds. The second paragraph of Civil Code section 2924j(d) states, "Within 90 days <u>after deposit</u> with the clerk, the court shall consider all claims filed at least 15 days before the date on which the hearing is scheduled by the court, <u>the clerk shall serve written notice of the hearing by first-class mail on all claimants identified in the trustee's declaration at the addresses specified therein.</u>" (Underlining added.)</p> <p>The court hereby sets a hearing to consider Sianne's and Gary's claims, and any other claims to the surplus funds to be deposited with the court, for Thursday, September 11, 2025, at 2:00 p.m., in Department C23. The clerk of the court is directed to give notice of this hearing by first class mail to all claimants identified in attachment 8 to the petition. Specifically, notice should be given to:</p> <p>SIANNE FITZMORRIS 4 DORADO RANCHO SANTA MARGARITA, CA 92688</p> <p>GARY FITZMORRIS 4 DORADO RANCHO SANTA MARGARITA, CA 92688</p> <p>STATE BOARD OF EQUALIZATION PO BOX 942879 SACRAMENTO, CA 94279-0055</p> <p>CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION</p>
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		<p>PO BOX 942879 SACRAMENTO, CA 94279-0055</p> <p>BELFLORA MAINTENANCE CORPORATION C/O OPTIMUM PROFESSIONAL PROPERTY MANAGEMENT, INC. 230 COMMERCE, SUITE 250 IRVINE, CA 92602</p> <p>RANCHO SANTA MARGARITA LANDSCAPE AND RECREATION CORPORATION C/O ASSESSMENT MANAGEMENT SERVICES 15241 LAGUNA CANYON ROAD IRVINE, CA 92618</p> <p>RANCHO SANTA MARGARITA LANDSCAPE AND RECREATION CORPORATION C/O SBS LIEN SERVICES 31194 LA BAYA DR, SUITE 106 WESTLAKE VILLAGE, CA 91362</p> <p>GARY FITZMORRIS C/O THE LAW OFFICE OF BRUCE C. BRIDGMAN 17500 RED HILL AVENUE, SUITE 230 IRVINE, CALIFORNIA, 92614</p> <p>SIANNE DEWI FITZMORRIS 26921 FORT APACHE CIR EL TORO, CA 92630</p> <p>SIANNE DEWI FITZMORRIS 28083 MOULTON PKWY STE C3 LAGUNA NIGUEL, CA 92677</p> <p>Any claims to the surplus funds must be filed with the court and served on the foregoing claimants at least 15 days before the foregoing hearing date. The court acknowledges the claims Sianne and Gary already have filed as described above, and the Sianne and Gary may either stand on their existing claims or file updated claims in accordance with the foregoing schedule.</p> <p>Petitioner's counsel is ordered to give notice of this ruling.</p>
11.	In re M.N. <i>2025-01484589</i>	<p>Before the court is the petition of petitioner Bentzen Financial, LLC (Petitioner) seeking court approval for the transfer of certain structured settlement payment rights by payee Marissa Norys (Payee). Specifically, Petitioner seeks approval for Payee to transfer 107 monthly payments of \$1,500 to Petitioner. The</p>

	<p>payments commence on September 1, 2025, and run through July 1, 2034, they total \$160,500, and they have a present value of \$128,415.38. In exchange for transferring the right to these payments, Payee shall receive a lump sum, present payment of \$90,000. As set forth below, the hearing on the petition is CONTINUED TO AUGUST 21, 2025, AT 2:00 PM., IN DEPARTMENT C23 for timely notice</p> <p>Insurance Code section 10139.5(f)(2) states, "Not less than 20 days prior to the scheduled hearing on any petition for approval of a transfer of structured settlement payment rights under this article, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer and the petition for its authorization, and shall include the following with that notice: [¶] (A) A copy of the transferee's current petition . . . [¶] (B) A copy of the proposed transfer agreement and disclosure form required by paragraph (3) of subdivision (a). [¶] . . . [¶] (D) A copy of the disclosure required in subdivision (b) of Section 10136. [¶] (E) A copy of the annuity contract, if available. [¶] (F) A copy of any qualified assignment agreement, if available. [¶] (G) A copy of the underlying structured settlement agreement, if available. [¶] . . . [¶] (I) Proof of service showing compliance with the notification requirements of this section. [¶] . . . [¶] (K) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the petition must be filed, which may not be less than 15 days after service of the transferee's notice, in order to be considered by the court. . . ."</p> <p>Here, Petitioner filed the original petition on May 22, 2025, and served it on May 27, 2025, but there are many things missing from that petition that section 10139.5(f)(2) required to be filed and served at least 20 days before this hearing. First, the original petition failed to identify Payee by her name; it simply identifies her as M.N. Second, the petition attaches a copy of the Transfer Agreement and Disclosure Form, but they are redacted and therefore incomplete. Third, there is no declaration by Payee providing the required information. Third, the petition does not attach a copy of the Annuity Contract or the Settlement Agreement. Fourth, the proof of service is incomplete in that it fails to identify Payee by her name rather than her initials, and it fails to identify the</p>
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	<p>address to which Payee’s copy of the documents was sent. The proof simply lists a city without any street address or post office box.</p> <p>Petitioner has since filed a First Amended Petition that identifies Payee by name, does not redact any of the attachments, and includes the Transfer Agreement, the Disclosure Statement, the professional advice waiver, Payee’s declaration, the Annuity Contract, and the Settlement Agreement. Moreover, the proof of service attached thereto identifies Payee by her name and includes her full mailing address. The First Amended Petition, however, was served on July 1, 2025, and filed on July 2, 2025. That is less than 20 days before the hearing, and therefore inadequate.</p> <p>Based on the foregoing, the hearing on the petition is CONTINUED as stated above for Petitioner to provide sufficient notice to all interest parties as required by the Insurance Code. Petitioner also will have to file a new proof of service showing Payee was served with the original petition and all other documents Petitioner filed with the original petition because the original proof of service was inadequate.</p> <p>Finally, as noted above, Petitioner filed the original petition without specifically identifying Payee by her name—instead using only her initials and redacting her name from the other documents. No basis for doing so was offered and it was corrected by the First Amended Petition only after a hearing was set.</p> <p>A real party in interest “may sue in his or her own name, or under any assumed name by which he or she is ‘known and recognized.’” (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2024) at ¶ 2:3.) “Filing a complaint under a fictitious name impairs the public’s right of access to court records,” and “violates the statutory requirement that a complaint include ‘names of all the parties.’” (<i>Id.</i> at ¶ 2:136.5 citing Cal. Rules Ct., rule 2.550(c); Code Civ. Proc. § 422.40.) Here, there is no indication that “M.N.” is the name by which Payee is “known and recognized,” nor is any reason given for the redaction of her name. The failure to use “M.N.’s” full name in the original petition impedes the ability of the court and other interested parties to verify any prior petitions, and, if any of them were denied, the reason for the denial.</p>
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		<p>In a prior case (2025-01472373), the Court has instructed Petitioner's counsel to use the complete names of all payees in any future petitions, unless there is a legitimate privacy reason for using a fictitious name and proper procedures are followed. The court also cautioned that failing to do so may result in striking the petition. That admonition, however, was provided after the original petition was filed in this case (albeit on the same day). As such, counsel is again reminded of that admonition.</p> <p>Nonetheless, the court directs the clerk to confirm the case title, register of actions, docket, list of parties, and court index accurately reflect Marissa Norys is the real party in interest in this case, not M.N., and to the extent necessary, correct those records to accurately reflect the parties to this action.</p> <p>Petitioner is ordered to give notice of this ruling.</p>
12.	Seng v. McKay <i>2017-00926970</i>	<p>Before the court is a status conference regarding (1) the application of judgment creditor Brian D. McKay, as Trustee of Brian D. McKay Trust (Creditor), for an order of sale regarding the dwelling located at 11 Allege Court, Foothill Ranch, California 92610 (Property), and (2) the family law court order staying any efforts to sell the Property.</p> <p>The order to show case regarding the sale of the Property was first issued on September 19, 2023. On December 1, 2023, the family law court issued its order staying any sale of the Property pending further order of that court. Since that time, this court has not received any notice of the family law court lifting the stay.</p> <p>This court has conducted several status conferences to check on the proceedings in the family law court. The most recent status conference was conducted on March 27, 2025, and the court was advised the stay remained in effect. Accordingly, the court continued the status conference to today's date and ordered Creditor's counsel to file a status conference report updating the court at least five court days before today's hearing. Creditor's counsel failed to do so.</p> <p>Accordingly, the parties should be prepared to update the court at the time of the hearing, and the court is considering issuing an order to show cause as to why the order to show cause regarding the sale of the home should not be dismissed.</p>

13.	Busch v. T. Bear Investments, LLC 201700959910	<p>Before the court are the following two motions filed by plaintiff and judgment creditor Noah Busch (Plaintiff): (1) motion to compel defendant and judgment debtor Edward Theodore Embry (Defendant) to respond to postjudgment document demands and request for monetary sanctions, and (2) motion to compel Defendant to respond to postjudgment special interrogatories and request for monetary sanctions. As set forth, both motions are GRANTED.</p> <p>Plaintiff has shown he served the document demands and the special interrogatories on Defendant on January 27, 2025, and Defendant had failed to serve any responses to either the document demands or the special interrogatories by the time Plaintiff filed and served these motions on March 18, 2025.</p> <p>As such, Defendant has waived all objections to the document demands and special interrogatories, and Plaintiff is entitled to an order compelling Defendant to serve verified responses. (Code Civ. Proc., §§ 2030.290, 2031.300.) Plaintiff likewise is entitled to an award of monetary sanctions. (<i>Ibid.</i>)</p> <p>Based on the foregoing, the motions are GRANTED and Defendant is ordered to serve verified written responses, without objections, to both the document demands and the special interrogatories within 20 days. Defendant is further ordered to produce all responsive documents within his possession, custody, or control within 30 days.</p> <p>The request for monetary sanctions also is GRANTED. Within 30 days of notice of this ruling, Defendant is ordered to pay a total of \$2,000 in monetary sanctions to Plaintiff through his counsel of record. Based on the duplicative and simply nature of these motions, the court finds a combined total of \$2,000 for both months to be the reasonable and appropriate amount of attorney fees.</p> <p>Plaintiff's counsel is ordered to serve notice of this ruling.</p>
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16.		