TENTATIVE RULINGS

DEPT C12

Judge Layne H. Melzer

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 will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling and, see also the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

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) 622-5212. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so 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 Cal. R. Ct. 3.1312.

Non-appearances: If nobody 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 might 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 C12 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to CCP §367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. 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" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so pursuant to CCP §367.75 and OCLR 375.

PUBLIC ACCESS: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

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.

TENTATIVE RULINGS
April 18, 2024

#	Case Name	

1	2015-00817962 American Express Centurion Bank vs. Hively	**American Express Centurion Bank** Motion for Order Evidencing Assignment of Judgment The Court will grant American Express National Bank's request to order that it is an assignee of a right as to this Judgment in favor of American Express Bank, FSB, as a result of a merger, subject to American Express submitting to the court the OCC approval of the merger referred, but inadvertently not attached to, counsel's supporting declaration. CCP §673 provides as follows: (a) **An assignee of a right represented by a judgment may become an assignee of record by filing with the clerk of the court which entered the judgment an acknowledgment of assignment of judgment**. (b) An acknowledgment of assignment of judgment shall contain all of the following: (1) The title of the court where the judgment is entered and the cause and number of the action. (2) The date of entry of the judgment and of any renewals of the judgment and where entered in the records of the court. (3) The name and address of the judgment creditor and name and last known address of the judgment debtor. (4) A statement describing the right represented by the judgment that is assigned to the assignee. (5) The name and address of the assignee. (c) The acknowledgment of assignment of judgment shall be: (1) Made in the manner of an acknowledgment of a conveyance of real property. (2) Executed and acknowledged by the judgment creditor or by the prior assignee of record if there is one. (d)(1) If an acknowledgment of assignment of judgment purports to be executed or acknowledged by an authorized agent of the judgment creditor or an authorized agent of a prior assignee of record, then documentation sufficient to evidence that authorization shall be filed together with the acknowledgment of assignment of judgment. (2) ***Notwithstanding paragraph (1), an assignee of a right represented by a judgment may also become an assignee of record by filing with the clerk of the court that entered judgment a court order or other documentation that evidences assignment of judgment by operation of law.*** A legal treatise discussing this section also discusses notice to be given to the judgment debtor: (3) [6:1542.6] **Validity of assignment not open to challenge under § 673:** The scope of CCP § 673 (¶ 6:1540 ff.) is limited to the process for an assignee to obtain standing to proceed under the EJL as the judgment creditor. No provision is made therein for a debtor to attack the creditor's authority to make the assignment or otherwise to challenge assignment of the judgment. Any challenge to the assignment must be raised in a separate proceeding. [See

		California Coastal Comm'n v. Allen, supra, 167 CA4th at 327, 83 CR3d at 909-910] b. [6:1543] **Judgment debtor protected until notice of assignment received:** Filing the acknowledgment of assignment with the court clerk does *not* give the judgment debtor notice of the assignment. If the judgment debtor pays the judgment creditor without actual notice of the assignment, such payment is credited to the judgment and the assignee cannot recover the amount of the payment from the judgment debtor. [Civ. C. § 954.5(c); and see Comment to CCP § 673] [6:1544] ***PRACTICE POINTER:*** For this reason, the assignee should *immediately* serve a copy of the executed acknowledgment of assignment on the judgment debtor and his or her attorney of record. The copy should be sent by certified mail, return receipt requested. (11. [6:1539] Enforcement of Judgment by Assignees:, Cal. Prac. Guide Enf. J. & Debt Ch. 6G-11.) The Court finds that moving party is an "assignee of right" based on the evidence submitted demonstrating a merger involving Plaintiff and moving party. The Court notes that Exhibit A appears to be missing from Counsel's declaration. Counsel shall file an amended Declaration prior to the hearing providing the court with this document. To validate moving party's status as an "assignee of record" moving party shall submit electronically a proposed order consistent with CCP §673. Upon execution by the Court, moving party as an adjudicated "assignee of record" shall serve a copy of this order on judgment debtor and his attorney of record by certified mail return receipt requested.
2	2024-01376235 Carson vs. Hallmark Specialty Insurance Company	**Kelly Carson** Motion to Compel Arbitration The court is inclined to deny petitioner Kelly Carson's petition and motion to compel respondent Hallmark Specialty Insurance Company to arbitrate Petitioner's claimed for payment of underinsured motorists benefits under his automobile policy with Respondent given the existence of a coverage dispute. **A. Legal Standard** A person who has automobile insurance coverage automatically is provided limited insurance coverage to protect against uninsured drivers or driver's whose insurance is insufficient to pay for the injuries or damage caused. Ins. Code, § 11580.2 Insurance protecting against a vehicle with no liability insurance is called "uninsured motorist" (UM) coverage, and insurance protecting against a vehicle with limited liability insurance coverage is called "underinsured motorist" (UIM) coverage. Recovery under UM or UIM coverage is against one's own insurance company. If insureds are unable to resolve claims against their own insurance company, arbitration before a single

		neutral arbitrator, not a court, is the proper venue. Ins. Code, § 11580.2 subd. (f). Arbitrations involving UM and UIM disputes are controlled by Civ. Proc. Code, §§ 1280 et seq. The basic provisions of the California Uninsured Motorist Act are embodied in Ins. C. §§ 11580.2-11580.5. California Insurance Code § 11580.2 requires insurers to provide coverage for bodily injury or wrongful death caused by uninsured or underinsured motorists. Subdivision (f) of § 11580.2 provides that if the insurer and the insured cannot agree whether the insured is legally entitled to recover damages from an uninsured motorist and the amount of such damages, those issues shall be determined by arbitration. *Freeman v. State Farm Mut. Auto. Ins. Co*. (1975) 14 Cal. 3d 473, 485. The purpose is to offer a means of resolving disputes that is more expeditious and less expensive than litigation. [*Mercury Ins. Group v. Sup.Ct. (Wooster)* (1998) 19 C4th 332, 342] A demand for arbitration must first be made. Such demand must contain a *declaration* under penalty of perjury stating: — whether the insured has a workers' compensation claim; — if so, that the claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and — if not, what reasons amount to good cause are grounds for the arbitration to proceed immediately. Ins. C. § 11580.2(f). If no lawsuit has yet been filed, either party may file suit for a court order compelling the other to arbitrate disputes covered by the policy. CCP § 1281.2 If the insurer refuses to arbitrate or the parties cannot agree on the method of arbitration, the proper remedy is to file a petition for an order compelling arbitration (CCP § 1281.2) or appointing an arbitrator (CCP § 1281.6). Ins. C. § 11580.2(f); *see Gordon v. G.R.O.U.P., Inc*. (1996) 49 CA4th 998, 1005. Absent agreement with the insurer, the insured has no authority to, instead, unilaterally initiate arbitration by selecting an arbitrator and scheduling a hearing. *American Home Assur. Co. v. Benowitz* (1991) 234 CA3d 192, 201. Under CCP section 1281.2, "a party to an agreement to arbitrate may not bring an action to compel specific performance of the arbitration provision until he or she can allege not only the existence of the agreement, *but also that the opposing party refuses to arbitrate the controversy*." *Spear v. California State Auto. Assn.* (1992) 2 Cal.4th 1035, 1041–1042 (emphasis added) (citation omitted); Code Civ. Proc., § 1281.2 ("On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the

respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, …") compare *Hyundai Amco Am., Inc. v S3H, Inc.* (2014) 232 Cal.App.4th 572, 577 (when party's filing of lawsuit clearly demonstrates refusal to arbitrate under terms of arbitration agreement, *opposing party* may petition to compel arbitration without first proving existence of prior formal demand).

Because an insurance policy is a contract, the strong public policy in favor of contractual arbitration applies to the policy arbitration provision required by section 11580.2, subdivision (f). *Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 342; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.

This policy in favor of arbitration is limited to the subjects covered by the arbitration provision, however:

> We explained in *Freeman* that Insurance Code section 11580.2, subdivision (f), "read literally, requires arbitration of two issues only: (1) whether the insured is entitled to recover against the uninsured motorist and (2) if so, the amount of the damages." (*Freeman, supra,* 14 Cal.3d at p. 480, 121 Cal.Rptr. 477, 535 P.2d 341.)
>
> . . .
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> **Determining whether a claimant is insured under an uninsured motorist provision is not a question of the underinsured tortfeasor's liability or damages owed to the insured, and is therefore not subject to arbitration under Insurance Code section 11580.2, subdivision (f)**.

Bouton v. USAA Casualty Ins. Co. (2008) 43 Cal.4th 1190, 1193 (bold added).

In any event, the statute "does not detail other procedures to be followed in such arbitrations (e.g., for commencing proceedings, for selection of arbitrator, for compelling attendance of witnesses, etc.)"; thus, "[u]nless the parties agree otherwise, those procedures are governed by the California Arbitration Act (CAA) (CCP § 1280 et seq.)." California Practice Guide: Insurance Litigation at ¶ 6:2398 (citing *Pilimai v. Farmers Ins. Exch. Co.* (2006) 39 Cal.4th 133, 141) ("[A]n uninsured motorist arbitration, although mandated by statute, nonetheless is a contractual arbitration subject to the provisions of the CAA …").

B. Merits

Code Civ. Proc. § 1281.2 provides, *inter alia*:

> "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court **shall** order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

(a) The right to compel arbitration has been waived by the petitioner; or
(b) Grounds exist for the rescission of the agreement.
(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. …"

(Emphasis supplied.)

C. Application

Petitioner does not disagree that there is a coverage dispute. Nor does he dispute that the coverage issue is *not* subject to arbitration. Rather, he contends that, on the basis of his petition, the court should compel arbitration as to the amount of his damages (and thus his recovery under the UIM insurance provision). [Reply (ROA #19) at 4-5.] Petitioner further contends that to dispute coverage Respondent should filed a declaratory relief action and there seek a stay of the arbitration. [Reply at 6.]

The parties do not cite any authority for how to proceed when an insured seeks UIM benefits but the insurer denies coverage. It appears, however, that the coverage issue needs to be decided by the court *before* an arbitrator decides the amount of UIM benefits to be paid under the policy.

> Applying this rule to the *Bouton* controversy, we hold that a court, not an arbitrator, must determine whether Bouton is insured under his sister's policy. Whether Bouton is a covered person under the insurance policy is not a question regarding the underinsured tortfeasor's liability to the insured, or the amount of damages. Questions of coverage—that is, whether the claimant is insured and therefore entitled to take advantage of the protection provided by the policy at issue—must be resolved **before** an arbitrator reaches the two arbitrable questions pursuant to section 11580.2, subdivision (f). Here, the policy acknowledges as much, providing that "arbitration ... shall not address any other issues, including but not limited to, coverage questions." Coverage questions fall outside of the two issues necessarily arbitrable under section 11580.2, subdivision (f), and must therefore be decided by a court, not an arbitrator, if the parties have not agreed to arbitrate more than the statute requires.

Bouton v. USAA Casualty Ins. Co. (2008) 43 Cal.4th 1190, 1201 (bold added).

> Similarly, the issue of the insolvency of the tortfeasor's insurer, **a prerequisite to uninsured motorist coverage** based upon insolvency**, must be determined by the court before the issues of the tortfeasor's liability and the insured's damages are arbitrable**.

State Farm Mut. Auto. Ins. Co. v. Superior Court (1994) 23 Cal.App.4th 1297, 1304 (bold added).

> Instead, the physical contact at issue—whether Marquez made contact with another vehicle while she was biking—goes to whether Marquez is covered under this policy. **Because the arbitration provision does not include within its scope issues of coverage, a court must resolve this issue before an arbitrator may reach the two arbitrable questions.**

Nationwide Insurance Company of America v. Marquez (E.D. Cal., Dec. 5, 2016, No. 2:16-CV-01978-WHO) 2016 WL 7104240, at *3 (bold added).

Also:

> Indeed, the California Supreme Court has held that liability and damages are the only arbitrable issues under the statute.[5] However, it has also been held that where the agreement to arbitrate is broader than the statute, the arbitrator may have a duty to arbitrate additional issues to give effect to the arbitration clause,[6] although in *Bouton v. USAA Casualty Insurance Co.*,[7] the Court clarified that "jurisdictional facts," such as waiver of the right to arbitration**, are the province of the courts and must be determined before the arbitrator can determine the "merits of the controversy"**:[8]
>
> While … we favor full and complete determination by the arbitrator of matters properly submitted to him, we cannot allow our enthusiasm for the expeditious and economical disposition of such matters to intrude upon our responsibility to determine whether the right to compel arbitration has been waived through failure to seek it in a timely manner. Bad faith issues are outside the scope of arbitration, but a court must grant a petition to arbitrate despite the non-arbitrable claim of bad faith. There is nothing to prevent the insured from filing a bad faith action against the insurer, but the issue of damages under the UM/UIM coverage is still relevant.[9] The bad faith claim should be stayed pending the completion of the UM/UIM arbitration proceeding.[10]

3 Auto. Liability Ins. 4th § 34:44 (bold added).

> **Disputes over the existence of coverage must be resolved by the court against the uninsured motorist carrier before the insured is entitled to arbitrate his uninsured motorist claim**. State Farm Mut. Auto. Ins. Co. v. Superior Court, 23 Cal. App. 4th 1297, 28 Cal. Rptr. 2d 711 (2d Dist. 1994) (question of whether tortfeasor's insurer's insolvency rendered the tortfeasor uninsured for uninsured motorist coverage purposes is not arbitrable).

		California Insurance Law Handbook § 10:3 (bold added). Respondent has made it clear that it disputes coverage and Petitioner has conceded there is a coverage dispute. The petition is not ripe until this coverage issue has been decided. As such the Court is inclined to deny the petition without prejudice. Petitioner to give notice.
3	2024-01373853 Frank vs. Fortress Worldwide, Inc.	**Peter C Frank** Petition to Confirm Arbitration Award Petitioner Peter C. Frank's Petition to confirm the arbitration award dated 1/4/24 is ***continued to 6/6/24 at 2PM***. Code Civ. Proc., § 1290.4 states in part: (a) A copy of the petition and a written notice of the time and place of the hearing thereof and any other papers upon which the petition is based shall be served in the manner provided in the arbitration agreement for the service of such petition and notice. (b) If the arbitration agreement does not provide the manner in which such service shall be made and the person upon whom service is to be made has not previously appeared in the proceeding and has not previously been served in accordance with this subdivision: (1) Service within this State shall be made in the manner provided by law for the service of summons in an action. The arbitration agreement did not state the manner for service of the Petition. Petitioner's proof of service states that the documents were electronically served, but this is not a proper method to serve summons. Furthermore, even if electronic service was proper, the sender's email address was not included on the proof of service per Code Civ. Proc., § 1013b(b)(1), which provides that proof of electronic service shall include "[t]he electronic service address and the residence of business address of the person making the electronic service." As a result, the hearing is continued so that Petitioner can properly serve respondents and file proof of the same, no later than five (5) court days prior to the continued hearing date. Petitioner shall give notice.

4	2021-01207123 Hart Wailea, LLC vs. WM Wailea LLC	**Hart Wailea, LLC** 1. Motion to Compel Response to Written Interrogatories 2. Motion to Compel Production Motion to Compel Responses to Post Judgment Interrogatories and for Monetary Sanctions Motion to Compel Responses to Post Judgment Request for Production of Documents and for Monetary Sanctions The unopposed motions by Judgment Creditor Hart Wailea, LLC ("Judgment Creditor") seeking an order compelling Judgment Debtor Paul Brahe ("Judgment Debtor") to respond to Judgment Creditor's written interrogatories and an order compelling Judgment Debtor to respond to Judgment Creditor's request for production is granted. Judgment Debtor shall serve verified responses, without objection, within 15 days. Sanctions are denied as the notices of motion did not state as against whom those sanctions were sought. (Code Civ. Proc., § 2030.040.) Judgment Creditor shall give notice.
5	2024-01376663 Hortua vs. United Wholesale Mortgage	**Lysander Hortua** Petition for Relief From Financial Obligation During Military Service Petitioner Lysander Hortua's unopposed petition for relief from the financial obligation owed to Respondent United Wholesale Mortgage during military service is granted. The Court finds the ability of Petitioner to comply with the terms of the subject mortgage obligation has been materially affected by reason of his deployment. Petitioner is granted a deferment of the payments due on the obligation for a period of time equal to the period of military service, which is presently expected to be from June 8, 2023 to April 27, 2024. The obligation shall be extended for the period of time that payments were deferred. **(**Mil. & Vet. Code, § 409.3, subds. (a), (d)(1).) Petitioner to give notice.
6	2023-01360622 In Re: Garcia	**Intelifund, LLC** Motion for Order Approving Petition for Approval of Transfer of Structured Settlement Payment Rights Petitioner Intelifund, LLC's petition for approval of the transfer of structured settlement payment rights by payee Isaias Garcia is granted. Petitioner is to submit a formal order. The court has reviewed and approves the First Amended Petition to sell to the transferee future payments. The court approves payee transferring the payee's rights to structured settlement payments totaling $95,538.28 in exchange for a purchase price of $64,753.85. The Court finds that (Insurance Code § 10139.5(a)): 1) The transfer is in the best interest of the payee taking into account the welfare and support of the payee's dependents. 2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived in writing the opportunity to receive the advice.

		3) The transferee has complied with the notification requirements of Insurance Code § 10136 and the transfer agreement complies with Insurance Code §§ 10136 and 10138. 4) The transfer does not contravene any applicable statute or the order of any court or other government authority. 5) The payee understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Insurance Code § 10136. 6) The payee understands and does not wish to exercise the payee's right to cancel the transfer agreement. Petitioner to give notice.
7	2021-01177003 PNG Builders vs. Connected Care, Inc.	**Sanjay Patil** Motion to Set Aside/Vacate Default and Judgment Judgment Debtor Sanjay Patil ("Patil") seeks an order setting aside the default and default judgment taken against him in this action. Patil's requests for the Court to take judicial notice of certain documents filed in this case are denied because it is unnecessary to ask the court to take judicial notice of materials previously filed in this case. A party may "simply call the court's attention to such papers." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶ 9:53.1a.) Judgment Creditor's requests for the Court to take judicial notice of documents filed with the Secretary of State are denied. (*Ojavan Investors, Inc. v. California Coastal Com.* (1994) 26 Cal.App.4th 516, 527, citing *People v. Thacker* (1985) 175 Cal.App.3d 594, 598-599.) Judgment Creditor's objections to Patil's and Gillan's declarations are overruled. Patil submitted additional evidence in support of Patil's reply. "The general rule of motion practice…is that new evidence is not permitted with reply papers…'[T]he inclusion of additional evidentiary matter with the reply should only be allowed in the exceptional case ...' and if permitted, the other party should be given the opportunity to respond." (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) Reply evidence should not address substantive issues in the first instance but only fill gaps in the evidence created by opposition. (*Id.*, at 1538.) The Court exercises its discretion to consider the reply evidence, which was offered in response to Judgment Creditor's contention that the Gillan email was written on behalf of both defendants. Judgment Creditor may respond to the reply evidence at the hearing. Patil's motion is untimely. (Code Civ. Proc., § 473.5, subd. (a).) Notice of entry of default judgment was served by mail on February 8, 2022 at Patil's residence and business. (ROA No. 35.) Patil served and filed this motion on January 31, 2024, over 180 days after notice of entry of default judgment was served on him. In addition, Patil did not show his lack of actual notice in time to defend was not caused by inexcusable neglect. (Code Civ. Proc., § 473.5, subd. (b).) Patil has not shown the default and default judgment was obtained or entered through fraud, mistake, or accident, or that Patil was prevented in any manner from defending it

		by fraud, mistake, or accident, and there had been no negligence, laches, or other fault on his part, or on the part of his agents. (*Olivera v. Grace* (1942) 19 Cal.2d 570, 575.) Accordingly, the motion is denied. Judgment Creditor shall give notice.
8	2023-01313860 Processpoint Investments, Limited vs. Pharma Funding, LLC	**Plaintiff Processpoint Investments, Limited** 1. Motion for Assignment Order **Defendant Pharma Funding** 2. Motion for Exemption From Assignment The Court will hear from the parties on Creditor's Motion for an Assignment Order and Debtor's Claim of Exemption.
9	806957 SMK Electronics Corporation vs. Borrelli	**SMK Electronics Corporation, USA** Claim of Exemption - Levy Counsel shall come to the hearing prepared to discuss the implications of the two-year time lapse between the writ of execution filed on 1/20/22 and the memorandum of garnishee that was delivered on 1/25/24, particularly in light of Code Civ. Proc., § 704.080(d) which states that within 10 business days after the levy, the financial institution shall provide the levying officer with notice, who shall then promptly serve said notice on the judgment creditor.
10	2023-01363364 Vazquez vs. Fintegy Consulting LLC	**Richard Vazquez** Petition to Confirm Arbitration Award Petitioner Richard Vazquez's petition for order confirming his arbitration award against respondent Fintegy Consulting LLC and entry of judgment thereon is **continued to 6/6/24 at 2PM** for Petitioner to properly serve Respondent with the first amended petition and notice of hearing. The petition and notice of hearing must be served at least 10 days before the hearing. Code Civ. Proc. § 1290.2. Where the arbitration agreement does not provide the manner in which service shall be made and the person on whom service is to be made has not previously appeared in the proceeding and has not previously been served in accordance with section 1290.4(a) of the Code of Civil Procedure, for service in

California the petition and notice of hearing must be served in a manner provided by law for the service of summons in an action. Code Civ. Proc. § 1290.4(b).

Proof of service must be filed five court days before the hearing. CRC 3.1300(c).

A summons may be served on a corporation by personal delivery to the agent for service of process, the president, CEO or "other head of the corporation," vice president, secretary, assistant secretary, treasurer, assistant treasurer, controller or CFO of the corporation. Code Civ. Proc. § 416.10(a), (b). Similarly, service on an unincorporated association, may be made on the president or "other head of the association." Code Civ. Proc. § 416.40(b). Or substitute service may be made by leaving the summons and complaint with a personal apparently in charge and mailing a copy to the same address. Code Civ. Proc. 415.20(a).

> **Limited liability companies:** Like a corporation, a limited liability company is required to designate an agent for service of process on the information form filed biennially with the Secretary of State. [Corps.C. § 17701.13(a)(2)]
> (1) [4:171] **Designated agent:** Service on a limited liability company is effected by serving the person designated as its agent for service of process. (If its designated agent is a corporation, service must be made on the person listed as the corporation's agent for service of process on its information return filed with the Secretary of State.) [Corps.C. § 17701.16(b)]
> (a) [4:172] **Method of service:** The designated agent may be served either by personal service (CCP § 415.10, ¶ 4:184 ff.); substitute service (CCP § 415.20(a), ¶ 4:193 ff.); or service by mail with acknowledgment of receipt (CCP § 415.30(a), ¶ 4:225 ff.).

Cal. Prac. Guide Civ. Pro. Before Trial Ch. 4-D §4:170 et seq.

Here, Petitioner is shown in the Operating Agreement as agent for service on Respondent, but this is noted to be subject to change without amendment to the Operating Agreement and Liju Varghese appeared at the arbitration on behalf of Respondent as its sole owner. [Petition, Ex. 8(c).]

Here, personal service of the Petition was purportedly made on Respondent Fintegy Consulting, LLC by delivery to Liju Varghese by leaving the papers for him with "Finest DOE (Indian/55/150/5'10/Hair blk) - Owner , Authorized to accept" and then mailing them to Liju Varghese. [ROA #12.]

Though the Proof of service indicates "Finest DOE" was authorized to accept service, it does not say where this information comes from and how s/he is authorized.

> Ostensible agency cannot be established by the representations or conduct of the purported agent; the statements or acts of the principal must be such as to cause the belief the agency exists. (*Dill v. Berquist*

		Construction Co. (1994) 24 Cal.App.4th 1426, 1438, fn. 11, 29 Cal.Rptr.2d 746; *Lee v. Helmco, Inc.* (1962) 199 Cal.App.2d 820, 834, 19 Cal.Rptr. 413.) *J.L. v. Children's Institute, Inc.* (2009) 177 Cal.App.4th 388, 404. The fact a person is authorized *to receive mail* on behalf of a corporation and to sign postal receipts acknowledging delivery does *not* mean he or she is authorized *to receive process* on behalf of the corporation that is served by mail. [*Dill v. Berquist Const. Co., Inc.* (1994) 24 CA4th 1426, 1437, 29 CR2d 746, 752] Cal. Prac. Guide Civ. Pro. Before Trial Ch. 4-D §4:143 In short, the proof of service does not show personal service as provided for by section 416.10. Nor is it clear how that is fixed by the process server declaring the recipient to be authorized to accept service.
11	2016-00834987 Ya-Ya Holdings, LLC vs Musilkantow	Motion to Set Aside/Vacate Judgment The Court denies Defendant Nicole Zuber's Motion to vacate the Judgment issued against her on Plaintiff Ya-Ya Holdings, LLC's Complaint on 9/20/16. Defendant moves under CCP §473(d), which in pertinent part: "The court may, ... on motion of either party after notice to the other party, set aside any void judgment or order." A judgment or order is void on its face when the invalidity is apparent upon an inspection of the judgment-roll, i.e., the face of the record as opposed to extrinsic evidence. (*Trackman v. Kenney* (2010) 187 Cal. App. 4th 175, 181.) This distinction may impact 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. (*Pittman v. Beck Park Apartments Ltd*. (2018) 20 Cal. App. 5th 1009, 1020-1021, if invalidity can be shown only through extrinsic evidence, the order/judgment is not void on its face); *Kremerman v. White* (2021) 71 Cal. App. 5th 358, 370-371, (merely looking at the judgment roll it was apparent substitute service was invalid and judgment thus void on its face).) Where a party moves under section 473, subdivision (d) to set aside "a judgment that, though valid on its face, is void for lack of proper service, the courts have adopted by analogy the statutory period for relief from a default judgment" provided by section 473.5, that is, the two-year outer limit. (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 209, pp. 814–815 (Witkin); *Rogers v. Silverman* (1989) 216 Cal.App.3d 1114, 1120–1124.) Thus, defendant cannot assert under section 473, subdivision (d) that the judgment, although facially valid, is void for lack of service. (*Trackman v. Kenney* (2010) 187 Cal.App.4th 175, 180–181.)

		Here, more than two years has expired from the Judgment and the Judgment is valid on its face based on the judgment-roll. The Proof of Service on which the default and resulting judgment is based complies with CCP § 415.20(b) for substitute service on an individual. The Proof of Service, found at ROA 29, states that the Summons and Complaint was served by substitute service at 10869 N. Scottsdale Road, 103, Scottsdale Arizona 85254 on 4/19/16. The accompanying Declaration of Licensed Private Investigator Paul Mooney testifies that this is a private mailing facility. This is also the same address that her husband, co-Defendant Musikantow, Defendant Zuber's husband, used when he specially appeared to file the Motion to Quash that was denied. If the only address reasonably known for the defendant is a private mailbox obtained through a commercial mail receiving agency, service may be effected on the first attempt by serving the facility. (CCP § 415.20(c); Bus. & Prof. Code § 17538.5(d)(1).) Here, Mr. Moody's declaration shows that the only address reasonably knows was the Private Post Office Box. Thus, the time has expired for this Motion under Section 473(d). Finally, even if the Court looked at the merits, Defendant has not met her burden. Filing a proof of service that complies with statutory standards creates a rebuttable presumption that service was proper. (*See Dill v. Berquist Const. Co., Inc*. (1994) 24 CA4th 1426, 1441–1442; *see also Floveyor Int'l, Ltd. v. Sup.Ct. (Shick Tube–Veyor Corp.)* (1997) 59 CA4th 789, 795.) Moreover, evidence Code section 647 provides that a registered process server's declaration of service establishes a presumption affecting the burden of producing evidence of the facts stated in the declaration. (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390). Here, the only evidence provided is a declaration from Mrs. Zuber, says in relevant part: "I was never served with (sic) summons or complaint." (Zuber Decl., ¶3.) Defendant's bald testimony is not enough to contradict the process server's declaration. Thus, the Motion is denied. Plaintiff is ordered to serve notice of this Order.

12	2023-01360535 Morgan vs. John Wayne Airport	Motion for Relief From Claim Requirement ***CONTINUED PER STIPULATION***
13	2023-01356585 MS Services LLC vs Razaghi	Application for Sale of Dwelling Before the Court is Creditor MS Services LLC's Petition and Application for sale of Debtor Kambiz Razaghi property located at 12275 Alta Panorama, Santa Ana, CA 92705 to satisfy a Judgment in the amount of $42,148.75. The judgment creditor must file the application for an order of sale in the county where the dwelling is located (together with any applicable filing fee. (Gov. C. § 70617(a)). The court must issue an order requiring the judgment debtor to appear and show cause (OSC) why an order for sale should not be made in accordance with the judgment creditor's application. [CCP § 704.770(a)] The creditor must also personally serve the above documents on an occupant of the dwelling; or, if there is no occupant present when service is attempted, must post the documents in a conspicuous place at the dwelling. [CCP § 704.770(b)(2).] Judgment Debtor received title to the Subject Property via Grant Deed on March 25, 2004. (See Declaration of Shawn Olson, para. 1; Exhibit "A"). The parties dispute whether the home is Debtor's principal place of residence. Debtor contends that he lives separately from his wife and son. (Razaghi Decl., ¶5.) The Court note that Debtor indicates that the Judgment is on appeal, but there is no indication that the enforcement of the Judgment is stayed pending the resolution of the appeal. The Court also notes that underlying debt appears to be consumer debt. In relevant part, the Application must state that the judgment is or is not based on a "consumer debt" (see CCP § 699.730(a)). Where the judgment is based on a consumer debt, the statement must include whether the consumer debt was secured by the debtor's principal place of residence at the time it was incurred or whether one of the exemptions listed in CCP § 699.730(b) applies. Where the consumer debt is owed to a financial institution (see CCP § 699.730(b)(7)), the statement must also provide the dollar amount of the original judgment on which the lien is based. The statement must include all bases that are applicable. [CCP § 704.760] Here, the application says in relevant part as follows (emphasis added):

		The Judgment **is based on a consumer debt**, as defined in Code of Civil 10 Procedure (CCP), Section 699.730, subdivision (a) "consumer debt" means debt incurred by an individual primarily for personal, family, or household purposes." The Judgment Debtor incurred debt within the definition described in CCP Section 699.730, subdivision (a), which is the basis of the Judgment. (Application, p. 3:9-13; see also Olson Decl., ¶6). But there is no indication as to whether the debt was "secured by the debtor's principal place of residence at the time it was incurred or whether one of the exemptions listed in CCP § 699.730(b) applies". Thus, the Court will issue the OSC as to why the property should not be sold to satisfy this debt. Creditor is ordered to submit the document for the Court's signature. The hearing on the Application will be continued to 6/6/24 at 2PM. Creditor is ordered to supplement the Application as set forth above at least 16 court days before the continued hearing date. Debtor can provide supplemental opposition papers at least nine court days prior to the continued hearing date. Creditor is ordered to serve notice.