



Superior Court of California County of San Benito

Tentative Decisions for January 6, 2025

Courtroom #1: Judge J. Omar Rodriguez

10:30 a.m.

CU-23-00238 Herron v. W. Ranch, LLC., et al.

The court grants Cross-Defendant's, W Ranch LLC, motion to set aside default judgment and default pursuant to California Code of Civil Procedure section 473(b). The objections to the Cross Plaintiff's evidence in support of opposition are sustained. The court grants judicial notice as requested by Cross-Defendant.

The court has authority to set aside default and default judgment when the entry of the same was caused by the mistake, inadvertence, surprise, or neglect of a party's attorney. (Cal. Code Civ. Proc. §473(b).) Similarly, a default and default judgment may be set aside when it was caused by the mistake, inadvertence, surprise, or excusable neglect of the defendant or some other third party. The distinction is that the set aside of the default for the mistake, inadvertence, surprise, or neglect of an attorney is, upon proper declaration of the attorney, mandatory, whereas set side in the other instance is discretionary for the court. Additionally, a default and default judgment may be set aside when the default or default judgement is void. (Cal. Code Civ. Proc. v§473(d).)

The court has inherent equitable power to set aside the default and default judgment where they were entered as a result of extrinsic fraud or mistake. There are strict timelines in the statute for seeking relief. A motion premised on Code of Civil Procedure section 473(b) must be filed within six months after the entry of the default judgment (when premised on

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attorney error, et al.), or within a reasonable time up to six months after the entry of default when based on the defendant's or other's mistake, inadvertence, surprise or excusable neglect. When the default judgment is void, there is no such deadline.

When addressing a request for discretionary relief, the motion must be supported by a declaration showing the mistake, inadvertence, surprise or excusable neglect (Cal. Code Civ. Proc. §473(b).) The motion must be accompanied by a copy of the answer or other responsive pleading that the Defendant proposes to file in the action if the motion is granted. (*Ibid.*) The motion must also comply with the Civil Law and Motion Rules (Cal. Rules of Court Rule 3.1103(a)(2)) and be accompanied by a supporting memorandum (Cal. Rules of Court Rule 3.1113.) The court may grant discretionary relief under Code of Civil Procedure section 473(b) when the defendant shows a material mistake of law or fact which caused the defendant to fail to file a timely response to the complaint. (*Liberman v. Aetna Ins. Co.* (1967) 249 Cal. App. 2nd 515, 523-524.) The controlling factors in determining if a mistake is excusable is when a reasonably prudent person under the same or similar circumstances might have made the same error. (*McClain v. Kissler* (2019) 39 Cal. App. 5th 399, 414-415.) This is not a “get-out-of-jail-free card for parties who later come to regret past inaction or sitting on their rights.” (*Ibid.*) Relief should be granted only when a party has made an honest and reasonable mistake. (*Id.* at 418.) Similarly, surprise for the purposes of this motion, is a condition or situation in which a party is placed to his injury, without default or negligence by that party and against which ordinary prudence could not have guarded. (*County of Los Angeles v. Financial Cas. & Sur. Inc.* (2015) 236 Cal. App. 4th 37, 44.) In ruling on the motion for relief, the proponent must present competent evidence and the affidavit must contain facts within the witnesses personal knowledge, not hearsay, opinions, or conclusions. (*Roman v. Usary Tire & Serv. Ctr.* (1994) 29 Cal. App. 4th 1422, 1427.)

Here, based on Cross-Defendant's counsel's declaration herein, the court addresses this matter pursuant to Code of Civil Procedure section 473(b). While Cross-Complainant argues that they had no choice but to request the default when they did, and that their action was not precipitous, the communications between Cross-Complainant and Cross Defendant's counsel are telling. Cross-Complainant communicated directly with counsel for Cross Defendant on August 4, 2024 advising that she would be amending the cross-complaint to add

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new defendants. This statement would indicate that the next action to be taken by the Cross-Complainant would be the preparation and filing of an amended complaint, rather than Cross-Complainant filing for a default the following day. (Jones Dec ¶¶19 - 22, ex 16, 17.) Such a communication would induce the mistaken belief in a that Cross-Complainant was going to amend the cross-complaint and would induce a reasonably prudent person to act accordingly, which is what appears to have occurred here.

The standard for relief from default is liberally construed in favor of the public policy of hearing cases on their merits. Cross-Defendant filed this motion within a reasonable period of time, given the Cross-Complainant's intervening motions for discovery, and certainly within six months of the date the default was entered. Cross-Defendant has, as is statutorily required, also provided other pleading appropriately responsive to the Cross-Complaint, in this instance, the proposed demurrer.

CU-24-00059 Mitchell & Danoff v. Hoffman

Plaintiff's unopposed motion is granted in full.

When a party is served with deposition notice but fails to either appear for examination or to proceed with it, or fails to serve a written objection to the notice at least 3 calendar days before the scheduled date on which the deposition is scheduled. (Cal. Code Civ. Proc. §2025.410(a), (b).) the party giving notice may move for an order to compel the deponent's attendance, their testimony, the production for inspection any document, electronically stored information, or tangible thing described in the notice. (Cal. Code Civ. Proc. §2025.450(a).) The motion generally must be accompanied by a "meet and confer" declaration pursuant to Code of Civil Procedure section 2016.040. (Cal. Code Civ. Proc. §2025.450(b)(2).) When a court grants the motion, the court must impose a monetary sanction in favor of the party who noticed the deposition and against the deponent, or the party with whom the deponent is affiliated, unless the court finds that the individual subject to the sanctions acted with substantial justification or that other circumstances make imposing sanctions unjust. (Cal. Code Civ. Proc. §2025.450(g)(1).) Ordinarily pursuant to Code of Civil Procedure section 2025.250 there are distance limitations on how far a party deponent can be required to travel. However, pursuant to Rule of Court Rule 3.1010(a) "[a]ny party

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may take an oral deposition by telephone, video conference, or other remote electronic means,” if notice is served with the notice of deposition or subpoena; the noticing party makes all arrangements for any other party to participate in the deposition in an equivalent manner; any party or attorney of record may be physically present at the deposition at the location of the deponent with written notice of such appearance served personally, by email, or fax at least five court days in advance and subject to Code of Civil Procedure section 2025.240. A deponent must appear as required by statute or as agreed by the parties and the deponent. (Cal. Rule of Court Rule 3.1010(c).)

Defendant was properly served with a Notice of Deposition for October 31, 2024. Defendant failed to appear without valid objection or justification. Defendant is ordered to make herself available for a deposition within 14 days of this order.

Defendant shall pay \$4,622.73 to Plaintiff for costs incurred to due non-compliance. Payment shall be paid no later than May 31, 2025.

CU-24-00222 Espiridion Gopar v. Taylor Farms Retail, Inc.

Defendant’s Motion to Compel Arbitration and Dismiss Claims, Stay Proceedings are DENIED.

The underlying complaint raises several claims as a class action for damages multiple violations of the Labor Code against the Defendant, including failing to pay employees all earned regular, minimum and overtime wages; failing to provide accurate itemized wage statements; failing to indemnify employees for expenses and losses incurred in discharging the duties of their employers; and that the Defendant engaged and engages in unfair and unlawful business practices by engaging in all of the employment practices described in the complaint.

Plaintiff and Defendant are parties to a Mutual Arbitration Agreement and Class Action Waiver (the “Arbitration Agreement”). The Arbitration Agreement states, “This Agreement is intended to be a written arbitration agreement enforceable under the Federal Arbitration Act (9. U.S.C. Section 1, et seq.) (“FAA”). All issues regarding the enforceability of this Agreement and its arbitrability shall be consistent with the FAA and the Supreme’s Courts decision in *Epic Systems Corp. Lewis*, 584 U.S. ___ (2018).” (Declaration of Andrew B. Levin, Exh. 1.) The Arbitration Agreement also states, “(t)o the extent not inconsistent

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with the FAA, this Agreement shall be governed by the law of the state where Employee last worked for Company.” (*Ibid.*)

Pursuant to the terms of the Arbitration Agreement, on June 5, 2024, Plaintiff filed a demand for arbitration with JAMS. As set forth in the demand for arbitration, Plaintiff alleges wage and hour violations predicated on Defendant’s violations of Labor Code sections 226(a), 510, 1194, 1197, 1197.1 and 2802. (Declaration of Bours ¶2, ex 1; Levin Dec. ¶2, ex 1.) On June 14, 2024, JAMS issued a “Notice Regarding Payments to JAMS in California Consumer and Employment Arbitrations” and “Notice of Intent to Initiate Arbitration.” (Declaration of Kristen M. Agnew (“Agnew Decl.”) ¶¶ 2, 3.) The documents advised that “payment is due upon receipt of the invoice.” (*Id.* at Exhs. 1, 2.) On July 24, 2024, JAMS posted an “Appointment of Arbitrator” to the JAMS Access portal. (Agnew Decl. ¶ 4, Exhibit 3.) The document stated that the paying party has been billed a preliminary invoice, that an invoice for the retainer was attached and payment is due upon receipt, citing California Code of Civil Procedure sections 1281.97-1281.99 regarding payment of fees for the arbitration. (*Ibid.*) JAMS attached a retainer invoice in the amount of \$9,000.00 to the correspondence. (*Ibid.*) There is no dispute that counsel for Defendant, Andrew B. Levin and Ricardo Bours, received the Appointment of Arbitrator and a copy of the retainer invoice. (Declaration of Andrew Levin (“Levin Decl.”) ¶ 8; see also Agnew Decl. ¶ 4, Exhibit 3.) On August 28, 2024, Plaintiff confirmed that Defendant had not remitted payment for the retainer invoice within 30-days, as required by Section 1281.98. (Agnew Decl. ¶ 5.) Plaintiff informed JAMS and Defendant that he was electing to withdraw from the arbitration given Defendant’s failure to timely pay the arbitration fees. (*Id.* at Exhibit 4.)

Section 1281.98(a) of the California Arbitration Act (“CAA”) provides that “if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach.” (Cal. Code Civ. Proc. §1281.98(a)(1).) If an employer breaches its payment obligation in section 1281.98(a), the employee may, among other options, “[w]ithdraw the claim from arbitration and proceed in a court of appropriate jurisdiction.” (Cal. Code Civ. Proc. §1281.98(b)(1); *Suarez v. Superior Court of San Diego*

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Cnty. (2024) 99 Cal. App. 5th 32, 37 (“A material breach waives the contractual right to arbitration and the consumer or employee is permitted to litigate the dispute in court if he or she so chooses.”)

The question is when, or if the FAA preempts the section(s) of the California Code of Civil Procedure regarding the payment of arbitration fees by the drafting party and the consequences of an untimely payment exceeding thirty days of the due date.

Defendant argues that *Hernandez v. Sohnen Enterprises, Inc.* (2024) 102 Cal.App.5th 222 is controlling authority. In *Hernandez*, the agreement stated that the agreement was “governed by the Federal Arbitration Act (“FAA”) 9 U.S. C. section 1, et seq.” The Court of Appeals determined that Code of Civil Procedure section 1281.97 was preempted by the FAA, and therefore inapplicable, because the agreement expressly referenced the FAA and its procedural terms. This ruling conflicts with several other California court cases, which hold that the FAA does not preempt Code of Civil Procedure sections 1987.97 and 1981.98 under the circumstances of an employer’s failure to timely pay arbitration fees. (See *Keeton v. Tesla Inc* (2024) 103 Cal. App. 5th 26; *Hohenshelt v. Sup Ct. (Golden State Foods Corp.)* (2024) 99 Cal. App 5th 1319.) The Court in *Hohenshelt* reasoned that sections 1281.97 through 1287.99 “prescribe further – rather than frustrate – the objectives of the FAA to honor the parties’ intent to arbitrate and to preserve arbitration as a speedy and effective alternative forum for resolving disputes.” (*Hohenshelt*, 99 Cal. App 5th at 1325-1326, citing *Suarez v. Superior Court* (2024) 99 Cal.App.5th 32, 41–42; *Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761, 783–784; *De Leon v. Juanita's Foods* (2022) 85 Cal.App.5th 740, 753–754.)

Here, the language of the Arbitration Agreement states that it is enforceable under the FAA and that all issues regarding the enforceability of the agreement or the arbitrability of the dispute would be *consistent* with the FAA, which is distinguishable from the contract language in *Hernandez*. In *Hernandez*, the agreement stated it was governed by the FAA. Here, the Arbitration Agreement states “to the extent *not inconsistent with the FAA*, this Agreement shall be governed by the law of the state where Employee last worked for Company.”

This case is subject to the requirements of the California Code of Civil Procedure section 1281.98. The 30-day time limitation is a bright line requirement, akin to a statute of

limitations. The purpose of the statute is to foster the intent of the FAA, to ensure that the swift and efficient arbitration of disputes, and to prevent the process from being derailed by the drafter and requestor's failure to pay the necessary fees for the arbitration to occur. Defendant materially breached the Arbitration Agreement and Plaintiff was permitted to elect to withdraw from arbitration given Defendant's failure to timely pay the arbitration fees. As a result, Defendant's Motion to Compel Arbitration and Dismiss Claims, Stay Proceedings are DENIED.

CU-24-00272 Petition of William Eugene Morris

The Petition is APPROVED as requested.

PR-23-00059 In the Matter of Dennis C. McDowell Living Trust

The Petition if APPROVED as requested.

PR-24-00102 In the Matter of Leonora Harris

The matter is continued to February 24, 2025 to allow Petitioner to file an amended petition correcting any typographical errors in the petition including the trustor's name and any dates, including years, included in the petition.

PR-24-00107 In the Matter of Sandra Terry

The Petition is APPROVED as requested. Bond is set waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on July 14, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

PR-24-00113 **In the Matter of Janis Ann Huddleston**

The Petition is APPROVED as requested. Bond is waived. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on July 14, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

PR-24-00114 **Estate of Robyn Marie Grannis**

The Petition is APPROVED as requested. Bond is set at \$60,000.00. Lucia Areias is appointed as referee. Full authority is granted to administer the estate under the Independent Administration of Estates Act. Petitioner is to file an Inventory and Appraisal within four months of issuance of letters (Prob. Code section 8800(b)) and either a petition for an order for final distribution of the estate or a report of status of administration within the timeframe set out in Probate Code section 12200.

The matter is set for hearing on July 14, 2025 at 10:30 a.m. for status of estate or final account and distribution. No appearances at the hearing will be required if the court determines that administration of the estate is timely proceeding, or good cause is shown why more time is required.

PR-24-00118 **Conservatorship of Nessa Jo Davis**

The hearing on the conservatorship shall be continued to February 10, 2025, at 10:30a.m. to allow for the completion of the investigation.

END OF TENTATIVE DECISIONS

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