TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, November 4, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 24CV04966, Benson v. Dutil

Defendant/Judgment Debtor Pierce Dutil ("Defendant") moves to set aside or vacate the entry of default and default judgment entered against him pursuant to C.C.P. sections 473(b), 473(d), and 473.5. The motion is **DENIED**.

PROCEDURAL HISTORY

Plaintiff/Judgment Creditor Phillip Benson ("Plaintiff") lent Defendant $172,500.00 on August 3, 2020, which would be paid in two monthly installments in October of 2020 and November of 2020 pursuant to a promissory note. (See Complaint, Exhibit A.) Plaintiff then filed his Complaint on August 26, 2024, seeking $172,500 owed plus 10% interest per year under the promissory note. (*Ibid.*) Plaintiff filed a Proof of Service of Process on September 17, 2024, showing service of the Summons, Complaint, Notice of Assignment, Case Management Conference ("CMC") and Order to Show Cause, and Notice of Non-Availability of Court Reporters via mail to Plaintiff's address at 128 Gloria Blvd., Smithville, Texas 78957. (See Proof of Service of Summons dated September 17, 2024.) Included with the Proof of Service of Summons is the USPS Return Receipt with Defendant's printed name and

signature dated August 31, 2024. (*Ibid.*) On November 4, 2024, Defendant attempted to file an Answer to the Complaint, but the filing was rejected for Defendant's failure to pay the fee required for filing his first paper in the action. (See Clerk Return Letter dated November 4, 2024.) The return address was sent to 128 Gloria Blvd. in Texas. (*Ibid.*) In compliance with California Rule of Court, Rule 3.724, Plaintiff's counsel filed a meet and confer declaration on April 21, 2025. (See Declaration re Meet & Confer, filed April 21, 2025.) The declaration contains emails from Plaintiff's counsel to Defendant to meet and confer about the upcoming CMC on March 27, 2025, and pending discovery motions set to be heard on April 23, 2025. (See Exhibit A to Declaration re Meet & Confer, filed April 21, 2025.) The emails start Wednesday, March 12, 2025 through Thursday, April 17, 2025, where Plaintiff's counsel attempts to set a meet and confer phone call with Defendant, which eventually occurred on April 17, 2025. (*Ibid*.) In these emails, Defendant told Plaintiff's counsel that he would not be attending the CMC due to personal reasons and stated that he was attempting to retain counsel. (*Ibid.*)

On April 18, 2025, Plaintiff filed a request for Entry of Default, which was entered. (See Request for Entry of Default dated April 18, 2025.) On April 23, 2025, the Court granted Plaintiff's two unopposed motions to compel initial responses and to deem admitted set one, Requests for Admission. (See Minute Order re Motion to Compel dated April 23, 2025.) On June 27, 2025, the Court entered default judgment against Defendant for $259,068.48, which included $172,500 for the loan plus $80,861.86 in prejudgment interest at the annual rate of 10%, plus $4,999.20 in attorney's fees, and $707.42 in costs. (See Default Judgment by Court dated June 27, 2025.) Defendant now moves the Court to set aside the entry of default and default judgment so that he may file his Answer. Plaintiff opposes the motion, to which Defendant replied.

The action was previously stayed due to a pending bankruptcy proceeding involving Defendant, but both parties confirmed in their supplemental briefs that that bankruptcy proceeding was dismissed on May 20, 2026, which terminated the automatic stay on this action. (Defendant's Supplemental Brief, 2:11-19.)

REQUESTS FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.)

Subject to these limitations, the Court **GRANTS** judicial notice of the ten court records attached as exhibits to Plaintiff's request for judicial notice.

OBJECTIONS TO EVIDENCE

Plaintiff's Objections Nos. 1 through 18 to the Declaration of Pierce Dutil are **OVERRULED**.

Plaintiff's Objections Nos. 1, 4, and 8 to the Declaration of Pierce Dutil are **OVERRULED**. Objection Nos. 2, 3, and 5 through 7 are **SUSTAINED**.

ANALYSIS

Legal Standard

Relief from Judgment

A court may relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect, but an application for this relief shall be accompanied by "a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (C.C.P. § 473(b).) Although a statement of reasons would be helpful, and may sometimes be relevant to prove the causal link between the attorney's conduct and the default, default judgment, or dismissal, a statement of reasons is not required. (*Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 435.) In determining whether the mistake or inadvertence was excusable, the court considers whether a reasonably prudent person under the same or similar circumstances might have made the same error. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258.)

Clerical Error

As C.C.P. §473(d) provides in relevant part, the court may "correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed." When correcting clerical mistakes, "the function of a nunc pro tunc order is merely to correct the record of the judgment and not to alter the judgment actually rendered—not to make an order now for then, but to enter now for then an order previously made. (*In re Marriage of Padgett* (2009) 172 Cal.App.4th 830, 852.) In other words, "the court can only make the record show that something was actually done at a previous time; a nunc pro tunc order cannot declare that something was done which was not done." (*Johnson & Johnson v. Sup. Ct.* (1985) 38 Cal.3d 243, 256.) The difference between a clerical error and a judicial error is whether the error was made in rendering the judgment (judicial error) or in recording the judgment (clerical error). (*People v. Karaman* (1992) 4 Cal.4th 335, 345.) To distinguish a clerical error from judicial error, courts consider "whether the challenged portion of the judgment was entered inadvertently (which is clerical error) versus advertently (which might be judicial error but is not clerical error)." (*Tokio Marine & Fire Ins. Cop. V. Western Pacific Roofing Corp*. (1999) 75 Cal.App.4th 110, 117-18.)

A judgment may be set aside on motion, with no limit on the time within which the motion must be made, when uncontested extrinsic evidence shows that the defendant was never properly served. (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 215.)

Failure to Serve Process

Per C.C.P. section 473.5(a), "when service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default

judgment and for leave to defend the action." The deadline to file a motion under this section is the earlier of the following: (1) within two years after entry of a default judgment against him or her; or (2) within 180 days after service on him or her of a written notice that the default or default judgment has been entered. (C.C.P. § 473.5.)

Per Civil Code section 1788.61(a)(1), notwithstanding C.C.P. section 473.5, a judgment debtor may move to set aside a default or default judgment where service of a summons in the action brought by a debt buyer has not resulted in actual notice to the judgment debtor in time to defend an action and a default has been entered against the person in the action.

Motion to Set Aside

Defendant moves to set aside the default judgment arguing it was void and entered without personal jurisdiction because service was not effectuated at the correct address. The address listed on the proof of service listed was "128 Gloria Boulevard, Smithville, TX 78957." Although the U.S.P.S. Certified Registered Mail receipt has a printed name "Pierce Dutil" and a signature as well, Defendant claims that address was not correct because his actual address is 126 Gloria Boulevard.

Opposition

Plaintiff argues that, not only did Defendant sign to confirm that he received the mailing of the Summons and Complaint, but he also engaged with extensive meet and confer correspondence and phone calls after receiving process of service to discuss the documents received. Furthermore, Plaintiff argues that the motion fails under C.C.P. section 473.5 because it is untimely brought under that section.

Reply

In the Reply, Defendant discusses confidential settlement communications that the Court may not consider. He also reaffirms similar arguments made in the motion and seeks relief under C.C.P. section 473.

Application

The Court does not find Defendant's arguments to be persuasive when there is an attached registered service receipt with Defendant's own name and signature noting that service was completed on him about two years ago. Furthermore, after he received service, he engaged in extensive meet and confer communications with Plaintiff's counsel regarding the matter. Defendant has not demonstrated that the service did not result in actual notice to him or that there was any defect on the face of the signed registered mail receipt that had his own signature, but only argues that right now he does not live at the address to which service was originally sent. The Court does not find this sufficient to demonstrate a failure to properly serve the summons and complaint on Defendant.

CONCLUSION

The motion is **DENIED**. Plaintiff shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2-4. 26CV05167, Brown v. Bodean Company, Inc.

The unopposed applications to appear to appear *pro hac vice* on behalf of Plaintiffs Qiana Brown, Shannon Knabe, and Katherine Hynes are **GRANTED** pursuant to California Rules of Court, Rule 9.40(b) for the below counsel:

1. Steven D. Liddle, Esq.
2. Matthew Z. Robb, Esq.
3. Laura L. Sheets, Esq.

Unless oral argument is requested, the Court will sign the proposed orders lodged with each respective application.

5. 26CV05181, Cortes v. Blue Link Wireless, LLC

Defendant Blue Link Wireless, LLC ("Defendant") moves for an order compelling arbitration pursuant to the arbitration clause in the parties' Mutual Arbitration Agreement and the Federal Arbitration Act ("FAA"). The motion is **GRANTED**, for the reasons described below.

I. PROCEDURAL BACKGROUND

Plaintiff Randy Cortes ("Plaintiff") filed a Class Action Complaint alleging various labor code violations against Defendant. Plaintiff's claims arise from working full-time as Sales Leader for Defendant's location in Santa Rosa, from November 1, 2025, to June 1, 2026. (Motion, 3:18-20.) During the onboarding process, Plaintiff received a Mutual Arbitration Agreement that Plaintiff electronically signed on October 30, 2025. (Herrera Decl., Exhibit B.) Plaintiff's digital signature coupled with time and date stamp was located below the following attestation:

> "By signing below, I acknowledge that I have received and read, or have had the opportunity to read, this arbitration agreement. I agree to this arbitration agreement and I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to arbitration pursuant to this arbitration agreement rather than to a judge and jury in court."

(Herrera Decl., Exhibit A.) Defendant now moves to compel arbitration based on the Mutual Arbitration Agreement and the FAA, which Plaintiff opposes. Defendant filed a Reply to the Opposition.

II. ANALYSIS

Motion to Compel

Defendant argues that the plain language of the Mutual Arbitration Agreement covers Plaintiff's claims brought in this action. As Defendant has presented a valid and written executed Mutual Arbitration Agreement, Defendant argues that the Court should enforce it and compel the parties to arbitration Plaintiff's claims.

Opposition

Plaintiff argues that the Mutual Arbitration Agreement is unconscionable because there was not a proper opportunity to review, comprehend, or consent to the onboarding documents, because employees were required to sign these documents forcefully as a condition to employment, and because the argument is a contract of adhesion and a take-it-or-leave-it type of agreement lacking any meaningful mutuality between the parties.

Reply

The Reply argues that Plaintiff failed to show any provision in the Mutual Arbitration Agreement that establish it to be procedurally or substantively unconscionable. The Reply notes that Plaintiff had time to review the documents because he did not execute the Agreement the same day it was presented to him and because the Agreement is mutual, read as a whole, because it applies to Plaintiff, the Company, or any third-party beneficiary.

Application

Defendant has produced a valid and enforceable signed Mutual Arbitration Agreement, which Plaintiff has not adequately established is procedurally or substantively unconscionable. The Court finds sufficient grounds to grant this motion/petition of arbitration.

III. CONCLUSION

The motion is **GRANTED**. The Court will sign the proposed order lodged with the motion.

6. MCV202060, Capital One v. Martinez

Plaintiff Capital One Bank (U.S.A.), N.A.'s unopposed motion to set aside Default Judgment entered against Defendant Gustavo Martinez on July 15, 2019, and dismiss this action without prejudice is **GRANTED**, pursuant to Code of Civil Procedure ("C.C.P.") section 473(d).

Plaintiff explains that, after the judgment was entered, Plaintiff received information regarding the underlying account that there was a claim for fraud, which Plaintiff reviewed and confirmed. As a result, Plaintiff argues that it would be in the interest of justice and fairness to set aside the default judgment and dismiss the matter without prejudice. No objection or opposition has been filed, so the Court will grant the unopposed motion and sign the proposed order lodged with the Court.