Superior Court of California
County of San Benito

Tentative Decisions for August 20, 2026

Courtroom #1: Judge J. Omar Rodriguez

CU-25-00186 Hazleton, Laurel vs. Sierra Golf Operations LLC

The Case Management Conference is continued to September 17, 2026 at 1:30 p.m. to be heard along with the Motion to Compel Arbitration and Stay Proceedings.

CU-25-00304 Unity Courier Service, Inc. vs. Budget Truck Rental, LLC

Defendant, Budget Truck Rental, LLC's ("Defendant") Motion to Vacate and Set Aside Entry of Default is GRANTED. Defendant shall file and serve a responsive pleading within 10 days of this order. A case management conference is scheduled to take place on October 22, 2026 at 1:30 p.m.

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 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.)

The standard for relief from default is liberally construed in favor of the public policy of hearing cases on their merits. Here, Sedgwick initially assigned the matter to Lewis Brisbois Bisgaard & Smith, LLP, to protect defendant's interest. The assignment was made before Defendant's responsive pleading deadline and for reasons unknown, Lewis Brisbois failed to timely file an answer. Defendant solely relied on its attorney (Lewis Brisbois) to timely file an answer in response to the service of the Summons and Complaint. Lewis Brisbois inadvertently made a mistake and failed to file a responsive pleading. Defendant filed this motion within a reasonable period of time. Defendant has, as is statutorily required, also provided other pleading appropriately responsive to the Complaint. Plaintiff's objections are overruled.

CU-25-00311 Enz, Susan W. vs. Enz, Russell,

CU-25-00312 Enz, Susan W. vs. Enz, Karen Elizabeth

Welfare and Institutions Code section 15657.03(a)(1) provides for elders to seek protective orders. (W&I §§15610.07, 15610.30.) A conservator may bring such a petition on behalf of an elder. (W&I§ 15657.03.) A prevailing party in such an action may be awarded court costs and attorney's fees, if any." (*Ibid*.) Fees and costs are mandatory when elder abuse is proven in civil actions, which underscores the public policy that victims of abuse should not have to pay to vindicate their rights. (W&I §§15657 sub (a), 15657.5 sub (a).) Here Petitioner was successful in obtaining restraining orders against Respondents. They knew or should have known that based on the evidence submitted in support of the TROs that a permanent order would almost certainly issue but instead forced the Petitioner to incur substantial fees to prepare for trial, which were preventable. (See Declaration of Ms. Modica.) After nearly four months of high conflict litigation, Respondents stipulated to the maximum restraining order after Petitioner called only himself as a witness.

"It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court, whose decision cannot be reversed in the absence of an abuse of discretion." (*Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 623; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132 ["ascertaining the fee amount is left to the trial court's sound discretion."].) Trial judges are entrusted with this discretionary determination because they are in the best position to assess the value of the professional services rendered in their courts. (*Ketchum, supra*, 24 Cal.4th at 1132; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095–1096; *Melnyk, supra*, 64 Cal.App.3d at 623.)

When assessing the reasonableness of any award of attorney's fees, courts frequently employ the "lodestar adjustment method," which "contemplates a preliminary determination of the amount of the lodestar-the reasonable number of hours expended multiplied by a reasonable hourly rate-and then the possibility of an adjustment of 'that figure up or down depending upon a variety of factors.'" (*Chodos v. Borman* (2014) 227 Cal.App.4th 76, 91-92.) These factors include the "nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case." (*Melnyk, supra*, 64 Cal.App.3d at 623-24.) In civil actions for physical elder abuse, the following factors are considered in awarding mandatory attorney's fees: "(a) The value of the abuse-related litigation in terms of the quality of life of the elder or dependent adult, and the results obtained; (b) Whether the defendant took reasonable and timely steps to determine the likelihood and extent of liability; (c) The reasonableness and timeliness of any written offer in compromise made by a party to the action." (Welf. & Inst. §15657.1.) As set forth in the declarations of Petitioner's counsel, the rates charged are commensurate with local counsel of similar skill and less than those charged in nearby Bay Area counties. (Modica §24). Further, sound billing judgment was exercised in preparing for this litigation, including a consideration for any work that may have been redundant, took too much time to complete, was not critical, or undertaken purely as a courtesy to Petitioner. (*Id.* ¶25.) The fees and costs in CU 25-00311 and 00312 are inextricably entwined. Ms. Modica did not bill these cases separately.

Petitioner's motions, as prayed, are GRANTED to the extent that the court awards the Petitioner a total of $221,924.50 in attorney's fees and costs collectively for these two cases, to be assessed jointly and severally against the Respondents Russell Enz and Karen Sims (a.k.a. Karrie Sims). The fees incurred in prosecuting each of these matters were bound together in party because of the Respondents' acting in concert in their abuse of Susan Enz, and so all work done on one file benefited the other. This makes unravelling each case's billing impossible.

CU-26-00037 Secure Octane Fund II LP vs. Aldefi, Inc.

Defendant's Demurrer to the First Amended Complaint ("FAC") is SUSTAINED with leave to amend. Plaintiff is to file and serve their amended complaint within thirty days of the date of this order. Defendants' Request for Judicial Notice is GRANTED. The Case Management Conference is continued to November 5, 2026 at 1:30 p.m.

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal. App. 5th 1007, 1014.) A party may demur when any ground for objection to a complaint appears on the face of it, or from a matter from which the court is required or may take judicial notice. (Cal. Code of Civ. Proc. §430.30(a); *Levya v. Neilson* (2000) 83 Cal.App.4th 1061, 1063.) Demurrer lies where it appears on the face of the complaint that the plaintiff has not alleged facts sufficient to state a cause of action. (Cal. Code of Civ. Proc. §430.10(e); *James v. Sup. Ct.* (1968) 261 Cal.App.2nd 415.) The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA. (2016*) 245 Cal App 4th 821, 834.) When any ground for objection to a complaint appears on the face thereof, or from any matter of which the court is required to or may take judicial notice, the objection on that ground may be taken by a demurrer to the pleading. (Cal. Code of Civ. Proc. §430.30(a); *Levya v. Nielson* (2000) 83 Cal. App. 4th 1061, 1063.) For the purpose of demurrer, a judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) For the purpose of testing the sufficiency of a cause of action, contentions, deductions, or conclusions of law are not admitted as true, and must be ignored. (*Aubry v. Tri-City Hosp Dist.* (1992) 2 Cal.4th 962, 966-67.) Additionally, a party may not allege facts inconsistent with the exhibits to the complaint. (*Moran v. Prime Healthcare Management, Inc.* (2016) 3 Cal.App.5th 1131, 1145-6.)

First Cause of Action - Fraud

A promissory fraud theory requires a showing of: "(1) a promise made regarding a material fact without any intention of performing it; (2) the existence of the intent not to perform at the time the promise was made; (3) intent to deceive or induce the promisee to enter into a transaction; (4) reasonable reliance by the promisee; (5) nonperformance by the party making the promise; and (6) resulting damage to the promise." (*Behnke v. State Farm Gen. Ins. Co.* (2011) 196 Cal.App.4th 1443, 1453.) Furthermore, fraud must be pled with specificity. (*Small v. Fritz Companies Inc*. (2003) 30 Cal.4th 167, 182.) General and conclusory allegations are insufficient to support a claim for fraud. (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1402.) Fraud constitutes "a serious attack on character, and fairness to the defendant demands that he should receive the fullest possible details of the charge in order to prepare his defense. Thus, the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect." (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.) "This particularity requirement necessitates pleading facts which "show how, when, where, to whom, and by what means the representations were tendered." (*Ibid*. citing *Hills Trans. Co. v. Southwest* (1968) 266 Cal.App.2d 702, 707.) In *Stansfield*, the Court of Appeal upheld trial court's decision to sustain the demurrer without leave to amend. The trial court has sustained a demurrer as to the fraud cause of action because the complaint did not allege who acted as the agent of what principal, when each false representation was made, and the causal connection between the misrepresentations and the harm to the complainants. (*Id*. at 74-75.)

Here, the FAC fails to satisfy the particularity requirements such as who made the statements, the location of any conversations, how the specific agreement was manifested, and facts showing Defendants made a representation that they knew was false at the time. Instead, the FAC includes general statements such as "The Founders and Secure Octane agreed that Secure Octane would invest $250,000 in Aldefi on the condition that the Founders would make an equivalent and simultaneous investment" (FAC 3:23-25); "On March 7, 2023, satisfied the Founders had made their investment as promised, Secure Octane executed a Simple Agreement for Future Equity ("SAFE")" (FAC 4:7-8.); and "During a call and an in-person conversation in or around late January 2023, the Founders and Secure Octane agreed that Secure Octane would invest $250,000 in Aldefi on the condition that the Founders would make an equivalent and simultaneous investment." (FAC ¶ 35.)

<u>Second and Third Causes of Action – Breach of Contract</u>

To bring a cause of action for breach of contract, Plaintiff must allege: "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and

(4) the resulting damages to plaintiff." (*Careau & Co. v. Sec. Pac. Bus. Credit, Inc* (1990) 222 Cal.App.3d 1371, 1388.) California also law requires that a plaintiff plead the existence of a written contract "either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.'" (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal. App. 4th 972, 993 (internal citations omitted).) To plead the existence of an oral contract, a party must set forth the nature and material terms of the agreement. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal. App. 4th 612, 616.) Plaintiff's first Complaint declares that the terms of the parties' promises and agreement rests on two written agreements, SAFE Note 1 and SAFE Note 2. (Compl. at 3-4.) The FAC asserts the agreement was oral. (FAC ¶¶ 47, 52.) "Unless the plaintiff provides a 'plausible' explanation for the inconsistency or omission (such as the need to correct a mistaken allegation or to clarify ambiguous facts), the trial court will take judicial notice of the prior pleading and disregard the new and contrary allegations." (*Smyth v. Berman* (2019) 31 Cal. App. 5th 183, 195 (2019).)

The FAC wholly fails to allege the relevant terms as required by California law, and fails to attach the two agreements between the parties: SAFE Notes 1 and 2. Plaintiff fails to adequately explain the omission or inconsistency between the original Complaint's allegation of a written contract and the FAC's allegations that the contracts or agreements were oral. It appears that the written contracts, SAFE Notes 1 and 2, are the written contracts that are the subject of the FAC. The FAC alleges that the in early 2023, the parties reached an agreement and in September, the parties reached another agreement. (FAC ¶¶47, 52.) Notes 1 and 2includes statements that the agreements were entered into on February 27, 2023 addressing a payment to be made on March 7, 2023, and entered into on September 25, 2023 addressing a payment to be made on September 25, 2023.

CU-26-00117 Mendez, Jose vs. True Leaf Farms, LLC

The Case Management Conference is continued to September 24, 2026 at 1:30 p.m. to be heard along with the Motion to Compel Arbitration.

PR-25-00072 In re the Matter of Susan Enz

In California, a waiver of attorney client privilege/work product doctrine may be accomplished by: 1) disclosing privileged communication in a non-confidential context (Evid. Code §912 (a).; 2) failing to claim privilege in a proceeding where the holder has the legal standing and opportunity to do so (*Ibid*.); and 3) failing to assert the privilege in a timely response to inspection demand. (Code Civ. Proc. §2031.300(a); *see also Catalina Island Yacht Club v. Sup. Ct.* (2015) 242 Cal.App.4th 1116, 1126.) The failure to include an objection based on attorney client privilege/work product doctrine in the initial responses to discovery results in waiver. (*Scottsdale Ins. Co. v. Sup. Ct*. (1997) 59 Cal.App.4th 273, 274.) The objection must be specific and, if an objection is based on a claim of privilege, the particular privilege invoked shall be stated. (Code Civ. Proc. §2031.240(b)(2).) The objection must expressly state if it is based on the claim that the information sought is protected work product. (*Ibid*.) Objections that are not asserted in the response are not preserved. (*Scottsdale Ins. Co v. Sup Ct.*, 59 Cal.App.4th at 268.) When a party fails to serve timely responses to discovery, that party waives any objection to the demand, including one based on privilege or the protection of work product. (Code Civ. Proc. §2031.300(a).) Pursuant to section 2031.300(a) a court, on motion, my relieve a party from the waiver of attorney client privilege/work product doctrine upon its determination that 1) the party has subsequently served a response that is substantially compliant with the relevant statute, and 2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect. Here, the court has already ruled on the question of whether there has been waiver of the attorney-client privilege or work product doctrine as of July 31, 2026.

It appears from the arguments presented here there is a conflation between the waiver of objections for failing to either a) assert the privilege/doctrine in the response or b) not providing responses timely or without authorized extension and waiving the privilege/doctrine in itself. Where there has been inadvertent disclosure of privileged documents, and that such disclosure does not waive attorney client/work product doctrine protection. In *Rico v. Mitsubishi Motors Corp* (2007) 42 Cal. 4th 807, the California Supreme Court held that when a lawyer "comes into possession of materials that clearly appear to be protected by the attorney client privilege or work product doctrine and it is reasonably apparent that the materials were disclosed without the holder of the privilege intending to waive it, the lawyer receiving the materials is prohibited from using them." (*Id*. at 817.) In *State Comp. Ins. Fund v. WPS, Inc.* (1999) 70 Cal. App. 4th 644, counsel for WPS received copies of State Compensation Insurance Fund (State Fund) internal documents containing privileged attorney client communications because State Fund's outside attorneys inadvertently sent them along with other documents produced for use at trial. WPS's counsel gave some of the privileged documents to an expert witness who then provided them to another lawyer who was adverse and pursuing a different claim against State Fund. When the error was discovered, and State Fund requested WPS counsel return the documents, they refused. The trial court found such conduct was in bad faith. State Fund involved a case where over 7000 pages of documents were produced. The rule articulated therein addressed the practical issue that modern document production may involve massive numbers of documents. "An attorney has an obligation not only to protect his client's interests but also to respect the legitimate interests of fellow members of the bar, the judiciary, and the administration of justice." (*Kirsch v. Duryea* (1978) 21 Cal. 3rd 303, 309.)

Here the subject documents were sent as part of a document production request, unlike that in Rico, where a document was apparently left behind after deposition and came into the possession of the opposing party. To the extent the documents at issue were the subject of the July 31, 2026 order were deemed to have been produced inadvertently and thus attorney-client privilege /work product protection has not been waived remains true. What also remains true is that objection based on this privilege/doctrine has not been asserted or the right to object on this basis has been lost. To the extent that Respondent has not moved to be relieved of the waiver of objections the court will not now address such relief.

While on July 31, 2026, this court ruled that inadvertent disclosure did not waive privilege, the failure to timely respond and assert timely objections does waive privilege. The failure to timely assert attorney-client privilege or work product protection in response to a production demand results in waiver of the right to object to discovery by asserting the privilege.

Ms. Sims' May 12, 2026, discovery responses and document production were the subject of meet and confer between counsel as Petitioner's counsel noted in adequacies, but notably Ms. Modica did not waive the statutory deadlines for discovery (Modica Dec. ISO Reply, ¶4.) Absent an actual agreement to extend response deadlines, the deadlines for response remain, despite Respondent's counsel's interpretation that they had "moved the parties slightly away from the formalities involved with the Discovery Act." An extension is granted or it is not. Here, there was no extension of the timeliness of the responses. Similarly, Russell Enz failed to timely provide discovery responses or seek an extension of time to do so. As noted by statute, this automatically waives all objections, including those based on attorney-client privilege or work product doctrine, absent court order relieving a party of that waiver. No such relief has been sought here.

The court has already ruled on the argument based on inadvertent disclosure. Based on the declarations of counsel, Petitioner's counsel is in compliance with that order. Petitioner now seeks this court to determine whether the waiver pursuant to Code of Civil Procedure section 2031.300 of all objections, including those based on work product or attorney client privilege has occurred. The right to object to production of documents on has been lost as a result of a) failing to assert it or b) failing to provide timely responses.

Respondents are hereby ordered to comply with their verified discovery responses and permit inspection and copying of all responsive documents, and Respondents may not withhold any responsive documents under a claim of attorney-client privilege or work product protection.

As set forth in the Motion, Petitioner is entitled to monetary sanctions. (Code Civ. Proc., §§ 2023.030, subd. (a); 2023.010, subds. (e) & (h); 2031.320, subd. (b).) The Court awards Petitioner monetary sanctions against Respondents in the total amount of $13,747.50 payable to Abbey, Weitzenberg, Warren & Emery PC within 10 days of notice of entry of this Order. Respondents have continuously failed and refused to acknowledge their waiver of the privilege, provide a privilege log, or offer any details demonstrating that the documents are actually protected from disclosure.