

Judge Benson – Law & Motion – Wednesday, December 14, 2022 @ 9:00 AM
TENTATIVE RULINGS

1. 19CV02574 Najolia, Miriam v. Chavez, Michelle et al.

EVENT: Defendant Joseph Guiffra's Motion to Set Aside Default and Default Judgment

The Court is inclined to grant Defendant Joseph Guiffra's Motion to Set Aside Default and Default Judgment. The Court is inclined to make this ruling not because it finds Mr. Jenkins' declaration lacks credibility. To the contrary, the Court finds Mr. Jenkins' declaration to be very credible. Rather, it appears to the Court that the entry of default and default judgment were necessarily void at the time they were issued. Because the box on the proof of service corresponding to the summons (or in this case, the amended summons) was not checked, the Court should have rejected both the default and default judgment applications when they were filed.

While the Court appreciates Plaintiff's contention that this was merely an oversight, it appears to the Court regardless whether this was an oversight or not, the Court did not have authority to enter default and default judgment based on the incomplete proof of service. Unless Plaintiff can direct the Court to some authority permitting it to transform void rulings into valid ones, the Court finds it must grant this motion.

As a result of granting this motion, Defendant's request that the abstract of judgment be stayed is also granted. Defendant shall file his proposed answer within 10 days of this order. Additionally, the OEX scheduled for January 11, 2023 is vacated. A case management conference is hereby scheduled for February 15, 2023 at 10:30am. Defendant shall prepare and submit a form of order consistent with this ruling within 10 days.

2. 22CV01540 Capital One Bank (USA) NA v. Poe, William R.

EVENT: Plaintiff's Motion for Order That Matters in Request of Truth of Facts Be Admitted

Plaintiff's Motion for Order That Matters in Request of Truth of Facts Be Admitted is GRANTED. The Court will sign the proposed order.

3. **22CV02044 In re: Ocaranza Rojano, Angel Jael**

EVENT: Change of Name (Adult)

The Court is in receipt of the proof of publication and will sign the decree provided.

4. **22CV02611 Modern Building Inc. v. Builders Door and Window, Inc. et al.**

EVENT: Modern Building Inc.'s Petition to Compel Arbitration and Stay Action Pending Arbitration

Modern Building Inc.'s Petition to Compel Arbitration and Stay Action Pending Arbitration is continued to January 11, 2023 at 9:00am so that it may comply with notice requirements of CCP § 1005, et seq.

5-6. **22CV02593 Haman, John et al. v. F & S Houseboats, LLC**

EVENT: (1) OSC re: Preliminary Injunction

(2) Plaintiff's Application for Writ of Possession

Plaintiff's application for preliminary injunction is granted and unopposed. The Court will sign the proposed order. Plaintiff's application for writ of possession is continued to December 28, 2022 at 9:00am to comply with the notice requirements of CCP § 1005. The November 23, 2022 order did not authorize the writ of possession to be heard on shortened time. Plaintiff's proof of service indicates the writ of possession papers were served on November 22, 2022 which is only 14 court days before the hearing. Plaintiff to give notice.

7. **22CV02341 In re: Fuller, Adrian Mark**

EVENT: Change of Name (Adult) (Continued from 11/30)

There is no proof of publication on file. Upon the filing of the proof of publication, the Court will sign the decree provided.

8. **22CV02202 In re: Peters, Bejay Willean**

EVENT: Change of Name (Adult) (continued from 11/16/22)

The Court is in receipt of the proof of publication and will sign the decree provided.