

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7848 (Department 54) by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 1.06.

Parties requesting services of a court reporter shall advise the court at the number stated above no later than 4:00 p.m. the court day before the hearing. Please be advised there is a \$30.00 fee for court reporting services, which must be paid in Room 102 prior to the hearing unless otherwise ordered, for each civil proceeding lasting less than one hour. Govt. Code §68086(a)(1)(A).

The Court Reporter will not report any proceeding unless a request is made and the requisite fees are paid in advance of the hearing.

**Department 54
Superior Court of California
813 Sixth Street, 2nd Floor
Raymond M. Cadei, Judge
Diane Ahee, Clerk
R. Mays/M. Oreschak, Bailiff**

Wednesday, April 19, 2017, 9:00 AM

Item 1 **2015-00175330-CU-OE**

Evyanne Phelps vs. Steven Madden Retail, Inc.

Nature of Proceeding: Motion for Admission Pro Hac Vice (Michael J. Gray)

Filed By: Ritchey, Cindi L.

The application for Michael J. Gray to appear *pro hac vice* is UNOPPOSED and GRANTED.

Defense counsel are advised that Department 54 is located at 813 6th Street, Sacramento, California 95814, not 720 9th Street. Future notices of motion shall include the correct address.

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 2 **2015-00181670-CU-OR**

Joseph Mohamed vs. Anatolia Units 1, 2 and 4 Master

Nature of Proceeding: Motion for Summary Judgment and/or Adjudication (Anatolia Units for

Filed By: Cammack, Stephen T.

On the Court's own motion, this matter is continued to **May 19, 2017** at 9:00 a.m. in this department.

Item 3 **2015-00181670-CU-OR**

Joseph Mohamed vs. Anatolia Units 1, 2 and 4 Master

Nature of Proceeding: Motion for Summary Judgment and/or Adjudication (Mohamed)

Filed By: Cassinat, John E.

On the Court's own motion, this matter is continued to **May 19, 2017** at 9:00 a.m. in this department.

Item 4 **2015-00181670-CU-OR**

Joseph Mohamed vs. Anatolia Units 1, 2 and 4 Master

Nature of Proceeding: Motion for Summary Judgment and/or Adjudication (Anatolia Units)

Filed By: Egan, Christopher M.

On the Court's own motion, this matter is continued to **May 19, 2017** at 9:00 a.m. in this department. The matter is continued because the Court requires additional briefing.

Section 5.8 of Anatolia's CC&R's provides, in part, that:

monthly Club Charge assessments shall commence as to any Homesite owned by a Merchant Builder, Declarant or any other Owner, on the date on which such Homesite or Condominium is annexed to the Master Association; provided however, that Club Charge assessments shall not commence as to any Homesite or Condominium until the first day of the month following the later of: (i) the close of escrow for the first sale of a Homesite to an Owner other than a Merchant Builder, or (ii) the date on which a Notice of Completion is filed for The Club. . .

The Court requires additional briefing on the issues of whether Section 5.8 has been satisfied for the 102 vacant lots. **The briefing shall be no longer than 5 pages. No new evidence is permitted, however, the parties may cite to evidence included in the moving or opposing papers.**

By no later than April 26, 2017, Anatolia shall file and serve a supplemental brief. By no later than May 3, 2017, Plaintiffs shall file and serve a response to the supplemental brief.

Item 5 **2015-00182122-CU-MC**

Mareka Cole vs. Ramona Dickson

Nature of Proceeding: Motion to Deem Matters Admitted (Wayne Dickson)

Filed By: Slocum, Stephen J.

Plaintiff's motion for an order deeming admitted her first set of requests for admissions, which were served as an attachment to her second set of form interrogatories, is GRANTED.

Defendant Wayne Dickson's (Wayne) unverified responses served after Plaintiff filed this motion do not substantially comply with CCP § 2033.220. (See *St. Mary v.*

Superior Court (2014) 223 Cal.App.4th 762, 778-779.)

Pursuant to CCP § 2033.280(c), the court imposes a mandatory monetary sanction in the amount of **\$760** (2 hrs @ reasonable rate of \$350/hr + \$60 filing fee). Wayne shall pay the sanction no later than May 19, 2017. If Wayne fails to pay the sanction by such date, then Plaintiff may lodge for the court's signature a formal order awarding sanctions, which may be enforced as a separate judgment. (See *Newland v. Superior Court* (1995) 40 Cal.App.4th 608, 615.)

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 6 **2015-00183880-CU-BC**

Antoinette Borbon vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 7 **2015-00184974-CU-PA**

Stella Ma vs. Audra Danielle Hatch

Nature of Proceeding: Motion to Compel Plaintiff to Answer Questions at Deposition

Filed By: Davis, Jr., Monte R.

This matter is dropped from calendar.

Item 8 **2015-00186436-CU-BC**

Cynthia Casey vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 9 **2016-00191502-CU-WT**

Peter K. Condy vs. Henry Company, LLC

Nature of Proceeding: Motion to Compel 1) Discovery Responses, 2) Documents 3) Set

Filed By: Durket, Matthew J.

**** If any party requests oral argument, then at the time the request is made, the requesting party shall inform the court and opposing counsel of the specific discovery request(s) or issue(s) on which oral argument is sought. ****

Plaintiff Peter K. Condy's (Condy) motion for an order compelling further responses to special interrogatories and document requests, compelling production of documents, scheduling depositions and imposing monetary sanctions is GRANTED in part and DENIED in part as follows:

Overview

This is an age discrimination case. The defending employer is Henry Company, LLC (Henry). Condy was 70-years-old when Henry terminated him from his position as Regional Sale Directors. Henry justifies the termination as part of a streamlining of its sales force.

Several months have elapsed since Condy propounded written discovery and served notice of Henry's PMK deposition. Condy argues Henry has not been forthcoming. Counsel met and conferred more than once, but Condy remains dissatisfied with Henry's responses and production of documents, which he characterizes as obstructionist. This motion followed.

Discussion

Condy's First Set of Special Interrogatories

Special Interrogatory No. 4: GRANTED

Henry's objections are overruled, and Henry must serve a verified further response.

The interrogatory calls for the "business conditions" necessitating either a workforce reduction or restructuring. Hence, Henry must identify the problematic conditions it sought to avoid and/or the beneficial conditions it sought to exploit.

Special Interrogatories Nos. 7-8: DENIED

Henry's objections are sustained, and no further responses are required.

The subject interrogatories call for "lists" of all Henry employees before and after Condy was terminated. Henry objected on grounds of privacy and overbreadth, among others. Condy voluntarily narrowed the requests during the meet-and-confer process, and Henry produced documents and information responsive to the narrowed requests. (See Opp. Sep. Stmt., pp. 4, 6.) If Condy wants additional information about the employees identified, he must propound further discovery and/or inquire during deposition.

Special Interrogatory No. 9: GRANTED

Henry's objections are overruled, and Henry must serve a verified further response.

The interrogatory asks Henry to "IDENTIFY any person who [sic] YOU employed on August 30, 2015 who were [sic] not employed by YOU on September 30, 2015." The term IDENTIFY is specially defined to mean "to state the person or entity's full and complete name, address(es), telephone number(s) and email address(es)." During the meet-and-confer process, Condy narrowed the request, and Henry provided some responsive documents and information. However, Henry failed to include the identified employees' contact information. Although the employees have some privacy interest in such information, Condy has a compelling need for it, and the interrogatory - as narrowed - is narrowly tailored to that end. Hence, Henry must provide the identified employees' contact information but is directed to do so pursuant to the protective order on file in this case.

To be clear: Henry shall serve a verified further response to the interrogatory, as narrowed, in which Henry identifies responsive employees and provides their addresses, telephone numbers and email addresses. Henry shall provide the information under the protective order so that the employees' contact information is not unnecessarily disseminated.

Special Interrogatory No. 10: GRANTED

In its opposition, Henry has agreed to provide the ages of responsive employees. The court construes Henry's position as its concession of the merits. The court rejects, however, Henry's position that its agreement to serve a further response renders this part of the motion moot. Once Condy filed the motion, he became entitled to a ruling. (See CCP § 1005.5.)

Henry shall serve a verified further response to the interrogatory, as narrowed, in which responsive employees' ages are set forth.

Special Interrogatory No. 11: GRANTED

In its opposition, Henry has agreed to provide additional information, which the court construes as Henry's concession of the merits. The court rejects Henry's position that its agreement to serve a further response renders this part of the motion moot. Once Condry filed the motion, he became entitled to a ruling. (See *id.*)

Henry shall serve a verified further response without objections. With respect to employees' contact information, the privacy analysis under Special Interrogatory No. 9 applies, and Henry shall provide contact information pursuant to the parties' protective order.

Special Interrogatory No. 12: DENIED

This interrogatory asks Henry to IDENTIFY, i.e., provide the full name and contact information for, all current employees. During the meet-and-confer process, Condry narrowed the request to employees in Henry's sales force and employees negatively impacted by Henry's restructuring. Henry provided some responsive information.

Despite Condry's narrowing of the interrogatory, the interrogatory remains overbroad, and Henry's objection on that ground is sustained. No further response is required.

Condry's First Set of Document Requests

Request No. 9: GRANTED

Request No. 9 calls for all documents that "REFER OR RELATE to a list of employees by age in the last ten years." The phrase "REFER OR RELATE" is defined to mean documents "which comprise, explicitly or implicitly, refer to, were reviewed in conjunction with, or were generated as a result of or in connection with, the subject of the request." Henry objected, including on grounds of overbreadth.

During the meet-and-confer process, Condry narrowed the request, and Henry has agreed to compile a list of sales personnel by age. Accordingly, Henry shall serve a verified further response indicating it will produce a list of sales personnel, by age, for the last 10 years. No additional written response is required.

Request No. 33: DENIED

This request calls for Henry's federal income tax returns concerning gross sales for years 2006 through 2015. Henry asserted privilege, and that objection is sustained. Absent exceptions not applicable here, tax returns and copies of tax returns are privileged. (See *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 719-721.) Henry has not waived the privilege, it has not placed its tax returns at issue, and there is no applicable public policy overcoming the privilege. (*Id.*, p. 721.) To the extent Henry's financial information is discoverable, Condry must request it from sources other than income tax returns.

Condy's Request for an Order Compelling Production of Responsive Documents and Scheduling Depositions

Condy's further requests are DENIED without prejudice.

First, the court has no authority to compel a production of documents until the responding party indicates it will make the production and thereafter fails to do so. (See CCP § 2031.320(a).) Because Henry has not communicated such a refusal, it would be premature to order Henry to produce responsive documents.

It would also be premature to order Henry to produce its PMK until Henry has had an opportunity comply with the instant order. Moreover, given that the court denies part of the instant motion, Condy may wish to propound additional discovery before deposition Henry's PMK.

That being said, counsel for both parties must work in good faith to comply with the Discovery Act. The court expects counsel to coordinate depositions accordingly.

Monetary Sanctions

Given the mixed results of the motion, and because both parties were substantially justified in their positions, no monetary sanctions are imposed.

Disposition

The motion is granted in part and denied in part on the terms above.

Where Henry is directed to serve further written responses, it shall do so no later than May 3, 2017.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 10 **2016-00192166-CU-BC**

Malinda Ruiz vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel

arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 11 **2016-00193128-CU-BC**

Nick Gonzales vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 12 **2016-00196446-CU-BC**

Angela Holland vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 13 **2016-00199696-CU-PO**

Susan McIntyre Wilson vs. Cemo Commercial

Nature of Proceeding: Motion to File Cross-Complaint

Filed By: Leonard, Susan F.

Defendant CEMO's motion for leave to file a cross-complaint is UNOPPOSED and GRANTED.

CEMO is directed to file the cross-complaint and serve it on all parties who have appeared no later than 05/01/17.

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 14 **2016-00200166-CU-BC**

Shaari Bowman vs. Bryan College

Nature of Proceeding: Petition to Compel Arbitration

Filed By: Baird, Courtney L.

The petition to compel arbitration is UNOPPOSED and GRANTED, and the parties are ORDERED to arbitrate their dispute pursuant to their arbitration agreement.

Petitioner's request for judicial notice of other trial court rulings on petitions to compel arbitration is DENIED as irrelevant.

This civil action is STAYED pending completion of the arbitration.

The notice of motion does not provide notice of the court's tentative ruling system, as required by Local Rule 1.06(D). Counsel for moving party is directed to contact counsel for opposing party forthwith and advise counsel of Local Rule 1.06 and the court's tentative ruling procedure. If counsel for moving party is unable to contact

counsel for opposing party prior to hearing, counsel for moving party shall be available at the hearing, in person or by telephone, in the event opposing party appears without following the procedures set forth in Local Rule 1.06(B).

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 15 **2016-00204740-CU-MC**

John Tos vs. California High Speed Rail Authority

Nature of Proceeding: Order to Show Cause Re: Preliminary Injunction

Filed By: Flashman, Stuart

This matter is CONTINUED to **4/26/2017 at 11:00 a.m.**, to be heard **simultaneously** with the demurrer and motion to strike which were scheduled for 4/18/2017 but now continued to 4/26/2017.

Item 16 **2017-00205706-CU-PT**

In Re: Amanda Jean Aguilar

Nature of Proceeding: Petition for Change of Name

Filed By: Aguilar, Amanda Jean

The petition for name change is GRANTED on condition that proof of publication is filed.

Item 17 **2017-00205857-CU-PT**

In Re: Ramsey Syntyche Franklin

Nature of Proceeding: Petition for Change of Name

Filed By: Franklin, Jr., Ramsey Syntyche

The petition for name change is GRANTED.

Item 18 **2017-00208624-CU-PT**

In Re: S. Cobbs

Nature of Proceeding: Petition for Approval for Transfer of Structured Settlement Payment

Filed By: Conway, Michael J.

Petition for Approval for Transfer of Payment Rights is CONTINUED to **4/26/2017 at 9:00 a.m.** to permit the filing of a supplemental declaration addressing the issues noted below.

Petitioner seeks approval of the purchase of 132 structured settlement payments of \$1,681.13 each, beginning on May 16, 2017, and ending on April 16, 2028 (a total of \$221,909.16) for the purchase price of \$150,000. The effective interest rate is 7.61%.

Mr. Cobbs is a 39 year old married man who has two minor children. Mr. Cobbs states he is "currently experiencing a financial hardship" and intends to use \$60,000 of the proceeds to "take care of some revolving debt" that he has accumulated, to set aside \$30,000 to \$40,000 of the proceeds for bills and other basic living expenses and to fund a retirement account, and to put the remaining \$50,000 to \$60,000 towards purchasing outright a new family vehicle.

Mr. Cobbs denies any prior transfers of structured settlement payment rights or attempts at transferring such rights.

This matter is continued to permit a supplemental declaration from Mr. Cobbs which provides specific details about the "financial hardship" he is currently experiencing, and why, if he is experiencing a financial hardship, it is necessary to spend \$50,000 to \$60,000 on a "new family vehicle."

The supplemental declaration shall be filed no later than 4/21/2017.

The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

Item 19 **2017-00209456-CU-PT**

In Re: Andre Leedell Hearvey

Nature of Proceeding: Petition for Change of Name

Filed By: Hearvey, Andre Leedell

APPEARANCE REQUIRED.

At the time of hearing, Petitioner shall submit for the court's signature a proposed decree on Judicial Council Form NC-130. In addition, Petitioner shall inform the court whether his assertion in the petition, that he is under the jurisdiction of the California Department of Corrections and Rehabilitation, is accurate. Elsewhere Petitioner indicates he has only been a federal prisoner.

The petition for name change is GRANTED.

In an ex parte application to advance the hearing, Petitioner produced evidence that (1) he has received an offer of employment requiring him to possess a valid Transportation Worker Identification Credential (TWIC); (2) Petitioner's TWIC expired, and a new requirement to obtain or renew a TWIC is presentation of a birth certificate; (3) in preparing to renew his TWIC, Petitioner noticed for the first time that the last name on his birth certificate differs from the one he has used during his lifetime; (4) if he is unable to renew his TWIC quickly, he risks losing the offered employment; and (5) the renewal itself takes between 30 to 60 days. Based on this evidence, the court advanced the hearing on the Petition to 04/19/17.

The court will sign the decree granting Petitioner's name change.

The hearing set for June 30, 2017 is VACATED.

Euler Hermes N. America Ins. Co. vs. Domus Surfaces LLC

Nature of Proceeding: Motion to Set Aside Default and Default Judgment

Filed By: Valenti, Anthony P.J.

Defendant Domus Surfaces, LLC's (Domus) motion for relief from default and default judgment is GRANTED.

On 09/21/16, Plaintiff filed a proof of service of summons. The proof of service indicates the process server hand-delivered the summons to:

Benjamin Petrick, OFFICE MANAGER, PERSON AUTHORIZED TO ACCEPT, who tried to refuse service, with Identity confirmed by verbal communication, a brown-haired white male approx. 25-35 years of age, 5'6"-5'8" tall and weighing over 300 lbs.

(See Prf. of Svc., ¶ 3(b).) Domus did not file a responsive pleading. Domus' default and default judgment were entered on 09/21/16.

Domus now argues the default and default judgment are void due to improper service of summons. In the alternative, Domus argues the default and default judgment should be vacated on grounds of reasonable mistake of law. Because the first argument has merit, the court does not reach the second one.

Domus is an LLC. Hence, Plaintiff was entitled to effect service either by delivering the summons to Domus' designated agent or by delivering it to one of the corporate agents enumerated in CCP § 416.10(b). (See Cal. Corp. Code § 17701.16(a).) It is undisputed that Benjamin Petrick (Benjamin), the one who received the summons, is not Domus' designated agent for service. Hence, service on Benjamin was only valid if he was a corporate agent under CCP § 416.10(b). That subdivision authorizes service on a corporation's "general manager" as well as "a person authorized by the corporation to receive service of process."

Plaintiff argues service on Benjamin was service on Domus' general manager. The court, however, disagrees. A general manager within the meaning of § 416.10(b) is a corporate agent of "sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made." (*Gibble v. Car-Lene Research, Inc.* (1998) 67 Cal.App.4th 295, 313.) Neither the proof of service nor Plaintiff's opposition contain facts shedding light on Benjamin's character and rank. The proof of service merely indicates Benjamin was an "officer manager." Although an office manager with authority over corporate employees and funds can qualify as a general manger, (see *id.*), there is no evidence before the court that Benjamin possessed such authority.

Plaintiff's proof of service arguably creates a presumption that valid service was made on a person "authorized to receive service of process." (CCP § 416.10(b); see also *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1141-1442 [proof of service of summons that complies with statutory service requirements creates a rebuttable presumption of proper service].) The proof indicates Benjamin was authorized to accept service and that he confirmed his "identity" through verbal communication. Defendant, nonetheless, has overcome any presumption with

declarations from Benjamin and the LLC's managing member, Tamara Petrick, that Benjamin was not authorized to accept service of process. Because Plaintiff has not adduced any evidence of Benjamin's authority other than the process server's conclusory assertion Benjamin was authorized to accept service, the court credits Domus' evidence and finds Benjamin lacked such authority.

For the foregoing reasons, the default and default judgment against Domus are void and must be vacated.

The court need not reach the parties' further dispute whether relief is also available on grounds of mistake, inadvertence, surprise or excusable neglect.

Domus need not file an answer or otherwise appear in the action until Plaintiff effects valid service.

Disposition

The default and default judgment are vacated as void.

All writs of execution are recalled, and Plaintiff's attempts to enforce the judgment must cease immediately.

The minute order is effective immediately. No formal order pursuant to CRC 3.1312 or further notice is required.

Item 21 **2017-00207264-CL-PT**

In Re: 150 Ford Rd, Sacramento, CA 95838

Nature of Proceeding: Notice of Hearing Re: Surplus Funds

Filed By: Carraher, Alexandria C.

The court has not received any claims to the surplus funds (\$4,746.39) deposited into court. Unless a request for oral argument is made pursuant to Local Rule 1.06, no hearing will take place, and the surplus funds shall escheat in accordance with the Unclaimed Property Law, CCP § 1500 *et seq.*
