

Tentative Rulings for June 16, 2026
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Rulings for Department 501

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(03)

Tentative Ruling

Re: **Campus Pointe Commercial, L.P. v. 5IVE 5IVE N9NE, LLC**
Case No. 25CECG04155

Hearing Date: June 16, 2026 (Dept. 501)

Motion: Defendants' Motion to Set Aside Default

**If oral argument is timely requested, it will be entertained on
Tuesday, June 23, 2026, at 3:30 p.m. in Department 501.**

Tentative Ruling:

To grant defendants' motion to set aside the default entered against them on November 25, 2025.

Explanation:

Defendants¹ move for relief from the default under Code of Civil Procedure section 473, subdivisions (b) and (d). Under section 473(b), "The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. 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." (Code Civ. Proc., § 473, subd. (b).)

"Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

"'[T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.' [Citation.]" (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 256.) "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

¹ Defendant Andrews is not an attorney, so he cannot represent Kicks, which is an LLC. Therefore, the motion is technically improper to the extent that Andrews is seeking to represent the LLC. However, Andrews does have the right to move for relief on his own behalf in *pro per*, and his arguments apply to the LLC as well.

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.)

"The 'surprise' referred to in section 473 is defined to be some 'condition or situation in which a party to a cause is unexpectedly placed to his injury, without any default or negligence of his own, which ordinary prudence could not have guarded against.' The 'excusable neglect' referred to in the section is that neglect which might have been the act of a reasonably prudent person under the same circumstances. A judgment will not ordinarily be vacated at the demand of a defendant who was either grossly negligent or changed his mind after the judgment." (*Baratti v. Baratti* (1952) 109 Cal.App.2d 917, 921, citations omitted.)

Also, the moving party must show that they were diligent in seeking relief from the default, and that they sought relief within a reasonable time after they learned of the default. "This court has held that what a 'reasonable time' is in any case depends primarily on the facts and circumstances of each individual case, but definitively requires a showing of diligence in making the motion after the discovery of the default. In other words, the moving party must not only make a sufficient showing of 'mistake, inadvertence, surprise, or neglect' in order to excuse the original default, but must also show diligence in filing its application under section 473 after learning about the default. If there is a delay in filing for relief under section 473, the reason for the delay must be substantial and must justify or excuse the delay." (*Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1181, citations omitted.)

Here, defendants have not shown that the default was entered against them due to their mistake, inadvertence, surprise or excusable neglect. In fact, defendants provide no explanation for their failure to answer the complaint other than that they were allegedly not served by personal delivery or any other method of service authorized by the Code of Civil Procedure. Nor have they provided a copy of their proposed answer with their motion. In addition, while they filed their motion less than six months after the default was entered against them, they admit that they waited almost two months after discovering the existence of the default before filing their motion. Defendants have not provided an explanation for their fairly lengthy delay in seeking relief from the default. Thus, they have failed to show that they are entitled to relief under section 473(b).

On the other hand, defendants have shown that they are entitled to relief from the default under section 473, subdivision (d). Section 473(d) provides that "[t]he court may, ... on motion of either party after notice to the other party, set aside any void judgment or order." (Code Civ. Proc., § 473, subd. (d).)

" '[I]nclusion of the word "may" in the language of section 473, subdivision (d) makes it clear that a trial court retains discretion to grant or deny a motion to set aside a void judgment [or order].' However, the trial court 'has no statutory power under section 473, subdivision (d) to set aside a judgment [or order] that is not void....' Thus, the reviewing court 'generally faces two separate determinations when considering an appeal based on section 473, subdivision (d): whether the order or judgment is void and,

if so, whether the trial court properly exercised its discretion in setting it aside.'" (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020, citations omitted.)

"In determining whether an order is void for purposes of section 473, subdivision (d), courts distinguish between orders that are void on the face of the record and orders that appear valid on the face of the record but are shown to be invalid through consideration of extrinsic evidence. 'This distinction may be important in a particular case because it impacts the procedural mechanism available to attack the judgment [or order], when the judgment [or order] may be attacked, and how the party challenging the judgment [or order] proves that the judgment [or order] is void.'" (*Id.* at pp. 1020–1021, citation omitted.)

"An order is considered void on its face only when the invalidity is apparent from an inspection of the judgment roll or court record without consideration of extrinsic evidence. There is no time limit to attack a judgment void on its face. If the invalidity can be shown only through consideration of extrinsic evidence, such as declarations or testimony, the order is not void on its face. Such an order must be challenged within the six-month time limit prescribed by section 473, subdivision (b), or by an independent action in equity." (*Id.* at p. 1021, citations omitted.)

Here, defendants claim that they were not properly served with the summons and complaint, which were served on the manager of a Postal Office box service rather than on them personally. They also claim that the complaint was not served on them by any method authorized under the Code of Civil Procedure. Thus, defendants conclude that the default is void and must be vacated.

In its opposition, plaintiff argues that it properly served defendants by serving the manager of private mail service where defendants maintain their Post Office box, as authorized by Code of Civil Procedure section 415.20, subdivision (c). Therefore, plaintiff concludes that the service was validly completed on defendants and the default is not void.

An inspection of the court's records indicates that defendants were served on September 10, 2025 at a business called The Postal Station located at 4460 West Shaw Avenue, #559, Fresno, California, 93722, by substituted service on the manager of the business. (See Proofs of Service filed November 25, 2025.) The process server subsequently mailed a copy of the summons and complaint to defendants at the same address. (*Ibid.*) When defendants failed to answer the complaint, plaintiff took their default on November 25, 2025.

Thus, the court's records show that defendants were not served by personal delivery or by substituted service on competent member of defendants' household at their residence or a person apparently in charge of their regular place of business. Consequently, the service of the summons and complaint did not comply with the usual methods provided under the Code of Civil Procedure. (Code Civ. Proc., §§ 415.10; 415.20.)

Also, since plaintiff served defendants by substituted service, plaintiff needed to provide some evidence that it was unable to reasonably serve defendants by personal delivery. (Code Civ. Proc., § 415.20, subd. (b).) Here, plaintiff's process server did not file a declaration of diligence with the proofs of service showing that he made several attempts to serve defendants personally and that he was unable to complete service.

