**Proposed Tentative**

On January 10, 2024, plaintiff Jefferson Capitol Systems, LLC (plaintiff) filed an unlimited complaint against defendant Laurie Mateyko (defendant) in common count (open book for money due, account stated, and money lent and due), alleging defendant owed $4,855.80, based on a credit card account. Attached to the complaint is a credit card statement, indicating the amount owed. On May 9, 2024, this court signed an order allowing plaintiff to provide "alternate service" on defendant by attaching a true copy of the court's May 9, 2024, order, the summons, the complaint, and any supporting document "to the front door or main entry way or gate, if the property is surrounded by a fence and gate, at 3572 Tivola St. A, Santa Ynez, CA 93460 and by mailing a copy of this Order, the Summons, Complaint, and Supporting Documents to the defendant at 3572 Tivola St A, Santa Ynez, CA 93460." According to the proof of service, the process served the summons, complaint, civil case cover sheet, the ADR packet, a declaration of jurisdictional facts, a civil case cover sheet addendum, declaration, and the court's May 9, 2024, order, by posting the documents at the above address on May 31, 2024, and mailing the documents to the above address on June 3, 2024. On October 9, 2024, plaintiff filed a request for entry of default and default judgment. This court signed the order for default judgment on October 10, 2024, with defendant owing plaintiff $5,150.

On October 28, 2024, defendant in *propria persona* filed a motion to vacate entry of default and default judgment. Defendant articulates four statutory bases for the motion: 1) discretionary relief pursuant to Code of Civil Procedure[1] section 473, subdivision (b), based on inadvertence, surprise, or excusable neglect; 2) section 473.5, subdivision (a) because while service met the statutory requirements, she received no actual notice of the lawsuit; 3) Civil Code section 1788.61; and 4) section 473, subdivision (d), because the judgment is void from the face of the judgment roll based on inadequate service. In the same motion, defendant asks the court to quash service, claiming that service failed to follow the statutory requirements. Finally, defendant raises a number of ill-defined contentions, such as 1) plaintiff failed to provide proper notice of "several motions that the plaintiff filed with the court" and she was unaware of these motions; and 2) the judgment was filed in Lompoc but issued in Santa Maria, raising "significant jurisdictional issues and further calls into question the validity of the judgment," although no further explanations or analysis is offered.

Defendant filed a declaration with her motion. She claims she was never personally served, either at home or at work. She declares that the process server "for the plaintiff alleges that a complaint was taped to my front door but I did not find any complaint there, nor did I receive anything through the U.S. mail, certified or otherwise." She goes on to explain that she resides "in a street level multi-unit home with an unmarked door[.] I believe that the complaint and service attempts were directed to and posted on the wrong door." She claims that she only

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

"became aware of this judgment on October 11, 2024, by chance, while doing research on the court's website."

Plaintiff has filed a barebones opposition. Plaintiff argues service was proper, relying on the presumption created by Evidence Code section 647, to the effect that where service is carried out by a registered process service, as it was here, a presumption affecting the burden of producing evidence exists – that is, if the proof of service filed by plaintiff includes a declaration from a registered process server averring he served defendant by substituted service, the defendant is required to produce evidence that he or she was not served. (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 383, 390.) Plaintiff contends that defendant was validly served by a registered process server and "had actual knowledge of the lawsuit," and defendant "has presented no valid evidence that refutes valid service." Plaintiff argues the court should deny the motion to vacate.

The court determines that while defendant is not entitled to relief pursuant to section 473, subdivisions (b) and (d), defendant has shown relief is appropriate pursuant to section 473.5, subdivision (a).[2] This provision provides: "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 notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered." This provision contemplates proper service that did not provide actual notice. (*Luxury Asset Lending, LLC v. Philadelphia Television Network, Inc.* (2020) 56 Cal.App.5th 894, 908.) The motion under this provision must be served and filed "within a reasonable time" but before the earlier of: (1) 180 days after service of written notice of the default or default judgment on the defendant or (2) two years after entry of the default judgment. (§ 473.5, subd. (a).) Relief under this provision is available only where the defendant's lack of actual notice "was not caused by his or her avoidance of service or inexcusable neglect." (§ 473.5, subd. (b).) To get relief, the defaulted defendant must submit an affidavit showing the lack of actual notice was not due to its avoidance of service or inexcusable neglect. (§ 473.5, subd. (b).) The trial court may set aside the default or default judgment if it finds the moving defendant has met the timeliness requirement and has

[2] Civil Code section 1788,61, subdivision (a)(1) provides that notwithstanding section 473.5, if service of a summons has not resulted in actual notice to a person in time to defend an action "by a debt buyer" and a default or default judgment has been entered against the person in the action, the person may serve or file a notice of the motion to set aside the default or default judgment within the earlier of six years after entry or default judgment, or 180 days of the fist actual notice of the action. Here, according to the operative pleading, plaintiff acted as a "debt buyer," implicating this provision. Nevertheless, for our purposes, because the standards in section 473.5 adequately frame the issues before the court, there is no need to rely on this statutory provision.

shown the lack of actual notice was not due to avoidance of service or inexcusable neglect. (*Id.*, subd. (c); *Luxury Asset Lending, LLC, supra,* 56 Cal.App.5th at p. 908.)

Defendant's motion was filed within 180 days after service of the default judgment, and the present motion was filed within a reasonable time of learning of the default judgment. Further, the proof of service shows substituted service was conducted by a registered process server; plaintiff can therefore properly rely on the presumption that service was accomplished, placing on defendant the burden to produce evidence that she was not served. (*American Express Centurion Bank v. Zara* (2011) 199 Cal.App.4th 393, 290.) Plaintiff offers noting in opposition other than this statutory presumption as a basis to deny the motion.

Defendant has filed a declaration to rebut the presumption, something the court can rely on in this context. The declaration indicates the following: 1) she never had actual notice of the lawsuit until October 10, 2024, when by pure happenstance she saw the default judgment on this court's website; 2) she never received a copy of the lawsuit through the mail (despite the process server's declaration that it was mailed); and 3) she never saw posted on her door or gate a copy of the lawsuit or this court's order authorizing such service. Defendant declares she works long hours, and explains further that she suspects the reason she did not see the lawsuit is because she "resides in street level multi-unit home with an unmarked door. I believe that the complaint and service attempts were directed to and posted on the wrong door."

A trial court is not required to accept defendant's self-serving declaration. Nevertheless, the court observes that this is the typical situation in which section 473.5 relief has been granted in the past – following constructive or substitute service, meaning the court has acquired jurisdiction over a defendant by proper service of the summons, but service does not result in actual notice to the defendant. (Cal. Judges Benchbook: Civil Proceedings—After Trial (CJER 2017) § 1.36.) More telling, upon close review of the process server's declaration, the declaration does not actually conflict with defendant's representations made in her declaration. (See, e.g., *American Express Centurian Bank, supra,* 199 Cal.App.4th at p. 390.) The process server declares generically that service was accomplished on May 31, 2024, at 3:08 in the afternoon, by "post[ing]" and then on June 3, 2024, by mailing with the United States Postal Service. He mailed the documents to "Laurie Mateyko 3572 Tivola St A Santa Ynez California." The process servicer does not explain *where he put the notice* -- either on a gate or on the front door of Unit A where defendant lived. Nothing in the process server's declaration undermines or counters defendant's declaration that her address is "unmarked," or counters her belief that "the complaint and service attempts were directed to and posted on the wrong door." The court has no reason to discount defendant's claims that she did not receive actual notice of the lawsuit given the incomplete descriptions offered in the process server's declaration. (See, e.g., *American Express Centurion Bank, supra,* 199 Cal.App.4th at p. 390 [the more detailed the explanations offered in the proof service, the less likely the court will accept the self-serving declaration of defendant]; see *Ramos v. Homeward Residential, Inc.* (2014) 223 Cal.App.4th 1424, 1444 [because California has a strong policy in favor of a trial on the merits, only very

slight evidence is required to justify a trial court's order setting aside a default]; see also *Sakaguchi v. Sakaguchi* (2009) 173 Cal.App.4th 852, 861–862 [denial of motion to set aside default was proper where defendant did not provide an affidavit stating lack of actual notice was not caused by inexcusable neglect or avoidance of service]; *Anastos v. Lee* (2004) 118 Cal.App.4th 1314, 1319 [same].) Based on defendant's representations, there was no inexcusable neglect or any attempt to avoid service.

Accordingly, the court finds defendant has overcome the presumption of proper service established by the process server's declaration, She has demonstrated that she in fact did not receive actual notice of the lawsuit, and, further, that her failure to receive actual notice was not the result of inexcusable neglect or an attempt to avoid service. The court will therefore grant defendant's motion to vacate entry of default and default judgment pursuant to section 473.5, subdivision (a). (See, e.g., *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1079 [doubts are resolved in favor for relief from default].)

Granting the motion to vacate obviates the need for the court to address all other arguments advanced by defendant, including the contemporaneously filed motion to quash and other allegations advanced.

**Summary:**

The court grants defendant's motion to vacate entry of default and default judgment pursuant to section 473.5, subdivision (a). The court therefore vacates the entry of default and default judgment, effective today. Defendant is directed to file a responsive pleading within 30 days from today's hearing. The court's decision obviates the need to address defendant's motion to quash or other arguments raised in or with the motion to vacate.