PROPOSED TENTATIVE

On November 21, 2025, plaintiffs Dolores Castillo and Maria Starnes (collectively, plaintiffs) filed a verified complaint against defendants Point Concepcion Owners Association (Point Concepcion), Sunrise Assessment Services (Sunrise), and Arshia Faghan (Faghan) (collectively, defendants), for nine causes of action (wrongful foreclosure, statutory violations, negligence per se, breach of written contact, breach of the covenant of good faith and fair dealing, cancellation of instruments, quiet title, unfair competition, and breach of fiduciary duty). On May 18, Ms. Faghan answered and filed a cross complaint. Point Concepcion's demurrer and motion to strike are on calendar for August 18, 2026. Trial is scheduled for October 5, 2026, with a trial confirmation date scheduled for September 14, 2026. A notice of related case was filed on February 10, 2026, relating this case with *Faghan v. Castillo*, Case No. 25CV06581.

On January 9, 2026, defendant Sunrise filed a "Notice of Nonmonetary Status," pursuant to Civil Code section 2924l, as a trustee under the dead of trust on property located at 823 E. Jones Street Unit 5, Santa Maria (central to this lawsuit). A declaration accompanied the application. Plaintiff's lawyer, Dennis Rasmussen, was served with the application (along with the accompanying declaration) by overnight mail and Federal Express delivery on January 9, 2026 (according to the proof of service). (See, e.g., *Kachlon v. Markowitz* (2008) 168 Cal.App.4th 316, 350–51.) To invoke this statutory procedure, "[t]he trustee must file a declaration of nonmonetary status stating that it reasonably believes it was named as a defendant solely in its capacity as trustee, and not for misconduct in its duties. If no party timely objects, 'the trustee shall not be required to participate any further in the action or proceeding, [and] shall not be subject to any monetary awards as and for damages, attorneys' fees or costs.' " (*Id.* at p. 351, quoting Civ. Code, § 2924*l,* subd. (d); see also *Bae v. T.D. Service Co. of Arizona* (2016) 245 Cal.App.4th 89, 94–95.) Civil Code section 2924l, subdivision (c) provides that "parties who have appeared in the action or proceeding shall have 15 days from the service of the declaration of the trustee in which to object to the nonmonetary judgment status of the trustee." On January 29, 2026, an application for an order was filed. Service of the application was made on Dennis Rasmussen, plaintiffs' attorney, again by overnight mail and Federal Express delivery (again, according to the proof of service). On February 3, 2026, this court signed the order (as there were no objections or responses) granting Sunrise nonmonetary status; the court in the order concluded the Sunrise shall have no further obligation to file any further responsive pleadings or otherwise respond in this matter and shall not be subject to any monetary awards , damages attorneys' fees or costs, as provided in Code of Civil Procedure section 2924l. Plaintiffs' attorney, Dennis Rasmussen, was served with this order on March 2, 2026, by mail.

On May 5, 2026, plaintiffs filed a motion to set aside the order granting non-monetary status to Sunrise. Plaintiffs rely on Code of Civil Procedure[1] section 473, subdivision (d) –

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

claiming service was void and thus the court should set aside the court's order granting nonmonetary status to Sunrise because service of the motion and application were sent to the wrong address. According to the declaration of Dennis Rasmussen, all proofs of service indicate the motion, application (and order) were sent to him at 680 E. Colorado Blvd., ***Suite 108***, Pasadena, when his address is ***Suite 180.*** Mr. Rasmussen declares that "Suite 108 is not and has never been the address of my office or my firm." He declares he never received the documents. Plaintiffs have also submitted the declaration of Mary Rosendale, who is a paralegal at Mr. Rassmussen's law office. She declares: "In January and February 2026, I was responsible for receiving and distributing all incoming mail and deliveries" for Mr. Rasmussen's law office, and "at no time did I receive or see a FedEx package or envelop" from defendant Sunrise or Sunrise counsel.

Alternatively, plaintiff asks the court to set aside the order based on the discretionary relief provision of 473, subdivision (b), claiming the court should set aside the order based on mistake, inadvertence, surprise, or excusable mistake, claiming that "relief is available where a party's failure to respond was caused entirely by circumstances beyond its control and through no faut of its own." (P. 8 of Motion.) Plaintiffs contend that their nonresponse "to the nonmonetary status proceedings resulted from Sunrise's own error in addressing service to the wrong suite, not from any inattention of neglect by counsel." (Motion at p. 8.)

Sunrise has filed opposition. In a declaration from Theresa Martin, who is employed as a paralegal by Scheer Law Group, LLP, counsel for Sunrise, Ms. Martin admits that she erroneously transcribed the address of Dennis Rasmussen as Suite 108 rather than Suite 180. She notes, however, that the original motion filed with the court on January 9, 2026, was served by mail and by Federal Express delivery. The same was true for the January 29, 2026, application for order. According to Ms. Martin, Federal Express acknowledges the improper address in both instances, but shows it nevertheless delivered the materials to the correct address ***at Suite 180***. (Exhibits D and E to Ms. Martin's declaration). According to the delivery information provided by Federal Express, the motion was delivered on January 12, 2026, to 680 E. Colorado Blvd. Suite 180, and was signed for by "S. Sandy."" The application for order was delivered on January 30, 2026, to 680 E. Colorado Blvd., Suite 180, and was signed by "G. Gabby."

Both parties ask the court to take judicial notice of certain documents. As both requests are unopposed, they are granted.

We start with section 473, subdivision (d), which provides as follows: "The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside a void judgment or order." The court has no authority to set an order that is not void under this provision. (*Pittman v. Beck Park Apartments Ltd.* (2018) 20 Cal.App.5th 1009, 1020.) A void judgment is determined from the court record (or judgment roll) without consideration of extrinsic evidence. (*Ibid.*) Improper service can render an order void under this provision. (*California Capital Ins. Co. v. Hoehn* (2024) 17 Cal.5th 207, 215.)

Plaintiffs have met their threshold burden under section 473, subdivision (d) – based on the court record, and notably the proofs of service – to show that service of the motion for nonmonetary status and its application order ***may*** possibly be void because the documents were served at the wrong address. But that does not end the inquiry. The opposing party is permitted to submit extrinsic evidence to show service was in fact valid. (See, e.g., *California Capital Ins. Co, supra,* 17 Cal.5th at p. 215 [an order may be set aside when "uncontested" extrinsic evidence shows that party was never properly served].) Sunrise has done so. The evidence before the court shows that the initial motion for nonmonetary status and the application for order were served via Federal Express delivery, and despite the error with the address (i.e., 108 Suite rather than 180 Suite), the motion and application were nevertheless properly served at the correct address, as reflected in evidence provided by Federal Express. (See Exhibits D and E of Ms. Martin's declaration.) True, Ms. Rosendale, a paralegal working for attorney Rasmussen, declares that in "January and February 2026" she was responsible for receiving and distributing all incoming mail and deliveries to the Attorney Rasmussen's office," and "at no time" did "[she] receive or see a FedEx package or envelope" from Sunrise counsel's office. But Federal Express has expressly indicated that the motion and applicate were served on two separate people ***at the appropriate address*** (Suite 180, seemingly associated with Attorney Rasmussen's office) – "S. Sandy" on January 12, 2026; and "G. Gabby" on January 20, 2026, respectively. Plaintiffs have ***not*** submitted a reply to counter this evidentiary showing. They have made no effort to show, for example, that neither "S. Sandy" nor "G. Gabby" worked for Attorney Rasmussen at the time of service. The court finds on the present record that service was not invalid, and thus, was not void.

This leaves plaintiffs' alternative argument under section 473, subdivision (b). By its terms, this provision contains two distinct provisions for relief: one mandatory, the other discretionary. (*Rodriquez v. WNT, Inc.* (2025) 116 Cal.App.5th 791, 802.) The mandatory provision is available only for defaults, default judgments, and dismissals (*ibid*.), and is based on an attorney affidavit of fault attesting to his or her "mistake, inadvertence, surprise or neglect." (*Ibid*.) This provision is not at issue here. Unlike the mandatory provision, the discretionary provision gives the court the power to grant relief from a broad category of adverse decisions (judgments, dismissals, orders, or other proceedings) caused by the mistake, inadvertence, surprise, or excusable neglect by the party's attorney. (*Martin Potts & Associates, Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 438.) Relief must be sought within six months of the order issued. Plaintiffs' motion seems timely.

In relying on the discretionary provision of section 473, subdivision (b), plaintiffs cite to *Rogalski v. Nabers Cadillac* (1992) 11 Cal.App.4th 816 and *Eltson v. City of Turlock* (1985) 38 Cal.3d 227. In *Rogalski*, the appellate court found that the trial court erred in failing to grant discretionary relief under section 473, subdivision (b) under the following circumstances. Plaintiff served a complaint on all defendants on May 20, 1991. Defendant Nabers contacted its insurance broker, who indicated the complaint was covered by Nabers' insurance policy with Golden Eagle. Golden Eagle acknowledged receipt of the complaint and initially indicated that there was coverage, although on June 15, 1991, Golden Eagle expressed doubt that coverage existed. It did not inform defendant, however, that it would not be filing a response. Accordingly, no response was filed, and entry of default was made. On July 31, 1991, defendant filed a motion to set aside the entry of default. The trial court denied the motion, and thereafter entered default judgment. The appellate court reversed. In this case, opined the appellate court (and despite the mandatory form of relief), courts have long afforded relief to litigants when their attorney neglect amounts to "positive misconduct" toward the client. "That is precisely what happened here. Golden Eagle repeatedly led Nabers to believe it would respond to the complaint and then abruptly abandoned Nabers without taking any steps to protect." (*Id*. at p. 821.) Because defendant immediately retained counsel who promptly filed the motion, there was no lack of diligence. The trial court erred in denying the motion to vacate entry of default as a result. (*Ibid.*)

In *Elston*, the court addressed whether the trial court abused its discretion in refusing to grant plaintiffs motion under section 473, subdivision (b) to set aside an order deeming his requests for admissions as true on the ground of excusable neglect. Plaintiff sued defendants City of Turlock and County of Stanislaus for a dangerous condition on property following plaintiff's motorcycle accident. Defendants propounded requests for admission, and plaintiff's attorney failed to respond in a timely manner. County notified plaintiffs that the facts alleged in the requests for admission were deemed admitted as true, and plaintiff's counsel moved to set the order under section 473, subdivision (b) on the ground of mistake, inadvertence, surprise or excusable neglect. (*Elston, supra,* 38 Cal.3d at p. 231.) The trial court denied the motion, but our high court reversed. Our high court found the motion to set aside was diligently pursued (*id.* at p. 234). Further, on the merits, it noted that in an affidavit accompanying the motion, counsel stated that "because two attorneys recently left the firm, his office was understaffed at the time of the request for admissions was received. Counsel was 'extensively' involved in other business and litigation matters at the time. In a supplemental affidavit, counsel explained that because his office was shorthanded, the request for admissions was misplaced and he was not aware of it until he received the county's notice that the matters contained in the request was deemed admitted." (*Id.* at p. 234.)

This was sufficient to support excusable neglect. (*Ibid.*) "Where an attorney states that he was unaware of his duty to appear or answer because his employees misplaced papers or misinformed him as to the relevant date, relief is routinely granted." (*Ibid.*) Additionally, counsel "also stated that he was busy with other matters during the relevant period. This circumstance alone would not constitute excusable neglect. [Citation.] However, the 'press of business' cases are not applicable here. Counsel does not allege that he was aware of the request for admissions and nevertheless failed to answer because he forgot or was too busy. . . . Instead, he contends that his office was understaffed, the papers were therefore misplaced, and he was unaware of their existence until the answers were overdue." (*Id.* at p. 235.) Because the law has a strong policy in favor of trial on the merits, and when defendants did not allege prejudice, the trial court erred in denying the motion to set aside the order. (*Id.* at p. 238.)

Plaintiffs attempt to analogize the present situation to the situations in *Rogalski* and *Elston.* As for *Rogalski*, plaintiffs claim that relief is available "where a party's failure to respond was caused entirely by circumstances beyond its control and through no fault of its own." (P. 8 of Motion.) As for *Elston*, plaintiffs contend "Plaintiffs' counsel non-response to the nonmonetary status proceedings result from Sunrise's own error in addressing service to the wrong suit, nor from any inattention or neglect by counsel."

The court is not persuaded by plaintiffs' reliance on either case under the circumstances presented. The same evidence that defeats plaintiffs' reliance on section 473, subdivision (d) also defeats plaintiffs' reliance on section 473, subdivision (b). If Federal Express delivered the motion and the application order to Suite 180 – that is, to employees "S. Sandy" and "G. Gabby" -- the foundational premise upon which plaintiffs argument rests dissipates. Mr. Rasmussen makes no attempt to argue (as counsel did in both *Rogalski* and *Elston*) that excusable mistakes were made by counsel and his staff. Plaintiffs instead consistently argue that the blame rests exclusively with Sunrise, not on any excusable neglect by counsel and staff with regard to the Federal Express package. The court will not go where counsel chooses not to tread. "In the face of these omissions, the trial court had no obligation to undertake its own search of the record "backwards and forwards to try to figure out how the law applies to the facts" of the case. (See *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 409 [58 Cal.Rptr.3d 527] [reviewing court is not obligated to undertake independent examination of record when appellant "'has shirked his responsibility in this respect"'].) Given the record in this case, the court will not exercise its discretion to set aside the nonmonetary status order under section 473, subdivision (b).

Summary:

The court denies the request to vacate or to set aside the February 3, 2026 order.