PARTIES/ATTORNEYS

Plaintiff	Jose Apolinar	Frank P. Cuykendall
Defendant	E Cortez Corporation dba Central Coast Produce	Vaughn Taus
Defendant	United Foods Inc.	H. Lamar Price, Esq Spiegel and Utrera, P.A.

TENTATIVE RULING

For all the reasons discussed below, absent service of process or service of a noticed motion to add United Foods, Inc. as an alter ego on the judgment, the judgment entered on June 13, 2024 is void for lack of jurisdiction and must be vacated as to United Foods Inc. under Code of Civil Procedure section 473 subdivision (d) ("The court may, ... on motion of either party after notice to the other party, set aside any void judgment or order.")

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

Plaintiff Jose Appolinar filed his initial on June 13, 2014 against defendant E Cortez Corporation dba Central Coast Produce complaint alleging wage and hour violations. Trial was initially set for June 15, 2015. That date was vacated after it was reported that defendant intended to file for bankruptcy. Notice of Stay of Proceedings pursuant to the automatic stay in bankruptcy was filed on February 5, 2016. On February 7, 2023, the court was advised that the automatic stay had been lifted. A court trial was held on June 3, 2024. Defendant did not appear. The court found in favor of the plaintiff and against the defendant E. Cortez Corporation for total Judgment of $278,721.73. The Judgment filed on July 13, 2024 specified it was against E Cortez Corporation *and* against United Foods Inc. "as Alter Ego."

1. The Motion is Untimely

On August 7, 2024, United Foods Inc. filed a motion to set aside the judgment on the ground that it had never been served with summons in this action and United Foods Inc. lacked actual notice of this lawsuit. Plaintiff's opposition was filed

on August 16, 2024.[1] Neither is timely. Code of Civil Procedure section 1005 subdivision (b) provides "all moving and supporting papers shall be *served and filed at least 16 court days before* the hearing." Opposition papers are to be filed nine court days before the hearing. Here, the hearing was initially set to be heard on August 21, 2024, in Department 1. The matter was reassigned to Department 2 (in which the trial was heard) and an amended notice was filed on August 8, 2024, for hearing on August 27, 2024. Neither filing was timely. The deadline to file is as important as the deadline for service, as the court schedules its work around these time frames. Nor was service timely. The first filed motion was served on August 7, 2024 and the second on August 8, 2024, both by email. Neither were served the required 16 court days before the hearing nor did service account for the necessary additional two court days for service by email. (Code Civ. Proc., § 1010.6, subd. (3)(B).)

Nevertheless, opposing party filed opposition on the merits and thus demonstrates no prejudice to the untimely service. The court will thus likewise consider the motion on the merits.

2. Merits

Although the court signed the Judgment identifying United Foods Inc. as an alter ego of E Cortez Corporation, upon further reflection the judgment must be vacated as the court never acquired jurisdiction over United Foods Inc. United Foods Inc. was never named as a defendant in any pleading and was never served in this action with either a complaint or the motion to amend the judgment. United Foods Inc. was not involved in this proceeding as a party until it was named as a judgment debtor in the June 13, 2024 Judgment.

Milrot v. Stamper Medical Corp. (1996) 44 Cal.App.4th 182 is instructive. In *Milrot*, the plaintiffs sued their employer, Stamper Medical Corporation, and obtained a judgment that identified the judgment debtor as "Stamper Medical Corporation 'et al.' " Plaintiffs moved to "clarify" the judgment to specifically identify two judgment debtors—Stamper Medical Corporation and Dr. Stamper. The trial court declined the plaintiffs' request to add Dr. Stamper as a judgment debtor, but it nonetheless amended the judgment to add Lindora Medical Clinic, Inc. (Lindora). (*Milrot, supra,* 44 Cal.App.4th at p. 184-185.) Lindora filed a motion to set aside the judgment against it, asserting (among other grounds) that the court never had personal jurisdiction over it and that the judgment against it was therefore void. The trial court denied the motion. The appellate court concluded the judgment against Lindora was void and reversed the order amending the judgment. (*Milrot, supra,* 44 Cal.App.4th at p. 188.) It reasoned that "[i]n order for the judgment against [Lindora] to be valid, the [trial] court must have had jurisdiction

[1] Although filed on August 16, 2024, it was submitted at 11:40 p.m. Thus, the court's first opportunity to address the opposition was on August 19, 2024.

over [Lindora]. Normally jurisdiction is acquired by service." (*Milrot, supra,* 44 Cal.App.4th at p. 186; see also Ahart, Cal. Practice Guide: Enforcing Judgments & Debts (The Rutter Group 2024) ¶ 6:1575.1 ["The court must have jurisdiction over the judgment debtor's alter ego in order to enter a valid judgment against the alter ego. This is normally accomplished by service of process."].)

The *Milrot* court continued: "The only other potential source of jurisdiction on this record is the appearance of attorney Sanders [nominally representing only Stamper and Dr. Stamper] at the motion to amend the judgment." The court held that "[t]he validity of the judgment against [Lindora] thus depends on whether attorney Sanders was authorized to appear on behalf of [Lindora] at the motion to amend the judgment." (*Milrot, supra,* 44 Cal.App.4th at p. 186.) The court then examined whether there was evidence of actual or ostensible authority to conclude whether the attorney had authority to appear on behalf of the Lindora and found there was none. The appellate court "reversed with directions to vacate the judgment against [Lindora] as void for lack of jurisdiction." (*Milrot, supra,* 44 Cal.App.4th at p. 188.)

Here, in comparison, a more fundamental problem exists, for there was no noticed motion to amend the judgment that was ever made from which knowledge could be imputed per *Milrot*. (*Wells Fargo Bank, Nat'l Ass'n v. Weinberg* (2014) 227 Cal.App.4th 1, 9—CCP § 187 "contemplates a noticed motion" and "trial court is not required to hold an evidentiary hearing.") Although plaintiff argues that United Foods Inc. should be charged with notice of its intent to pursue it as an alter ego of E Cortez Corporation by virtue of attorney Taus's appearances at proceedings in which such intent was expressed, appropriate legal process was not pursued.

Thus, even if attorney Taus were found to represent United Foods Inc., *absent service of a noticed motion or service of process*, the judgment must be vacated. The judgment entered on June 13, 2024 is void for lack of jurisdiction and must be vacated as to United Foods Inc. under Code of Civil Procedure section 473 subdivision (d) ("The court may, ... on motion of either party after notice to the other party, set aside any void judgment or order.")