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Attorneys for Plaintiff DYLAN YEISER-FODNESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DYLAN YEISER-FODNESS, an individual,

Plaintiff,

v.

MASTER DOG TRAINING, a California corporation; 5 STAR K-9 ACADEMY, INC., a California corporation; EKATERINA KOROTUN, an individual; and DOES 1 through 25, inclusive,

Defendants.

Case No.: 22STCV21852

[Assigned for All Purposes to the Hon. Armen Tamzarian, Dept. 52]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE DEFAULT

Date:	January 26, 2023
Time:	9:00 a.m.
Place:	Dept. 52
Complaint Filed:	July 6, 2022
Trial Date:	None set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Dylan Yeiser-Fodness ("Plaintiff") submits the following Memorandum of Points and Authorities in support of his Opposition to Defendants Master Dog Training, 5 Star K-9 Academy, Inc., ("5 Star") and Ekaterina Korotun ("Korotun") (collectively "Defendants") Motion to Set Aside Default.

I. INTRODUCTION

This action was filed on July 6, 2022. On September 21, 2022, Plaintiff filed Requests for Entries of Default (the "Requests") as to Defendants Korotun and 5 Star. Those Requests were granted and defaults were entered against Korotun and 5 Star on October 3, 2022. Plaintiff sent courtesy copies of the granted defaults to Defense Counsel on October 6, 2022, despite the fact that Defense Counsel had not actually appeared in this case nor confirmed her representation of Defendants. Nevertheless, Defendants filed an Answer to Plaintiff's Complaint on October 11, 2022. On December 30, 2022, Defendants filed their Motion to Set Aside the Defaults ("the Motion"). Plaintiff hereby submits his Memorandum of Points and Authorities in support of his Opposition to Defendants' Motion. Plaintiff respectfully requests the Court to deny Defendants' Motion in its entirety.

II. ARGUMENT

In sum, Plaintiff respectfully requests the Court to deny Defendants' Motion in its entirety for the reasons articulated below.

A. Defendants' Motion Is Untimely

Under Code Civ. Proc. § 473(b), a motion to set aside default must be filed "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." Here, the Defaults were entered on October 3, 2022. Plaintiff provided Defendants with notice of the Defaults on October 6, 2022. Yet Defendants did not file their Motion until December 30, 2022—eighty-five (85) days after receiving notice.

Defendants' Motion states that it is timely because it was filed "within 30 days from the moment of actual notice of default received by the Defendants' attorney during the hearing on 11/30/2022." (Motion at 5.) This is false. As stated above and shown by **Exhibit A,** Defendants had actual notice of the entries of default as of October 6, 2022. There is thus no sufficient justification for Defendants' nearly three-month delay in filing their Motion.

The Court should accordingly deny Defendants' motion because Defendants have failed to establish that their Motion was timely.

B. <u>The Defaults Were Not Entered Due to Surprise, Inadvertence, Or Excusable Neglect</u>

Code Civ. Proc. § 473(b) permits relief from an entry of default "taken against [a party] through his or her mistake, inadvertence, surprise, or excusable neglect . . . *unless* the court finds that the default or dismissal was not in fact caused by" the same. (Emphasis added.)

Defendants' Motion states that such "excusable neglect" exists because "Plaintiff' [sic] counsel knew the identity of the Defendants' attorney, but failed to provide a notice of actual entry of default." (Motion at 8.) Defendants further claim that "Plaintiff [sic] attorney never served Defendant with the copy of the request to enter default . . . .," that, "being unaware of the default entered against defendant by clerk [sic] due to the failure of the Plaintiff to serve notice of the default entered, Defendants' counsel filed an answer on 10/11/2022," and that "[o]n 11/30/2022, during the hearing on Motion to compel arbitration, Defendants' attorney first time [sic] learned about entry of the default." (Motion at 4.) All of these statements are false. Attached hereto as **Exhibit A** is a copy of Plaintiff's Counsel's email to Defense Counsel on October 6, 2022—five (5) days before Defendants filed their Answers, fifty-five (55) days before the November 30 hearing, and eighty-five (85) days before the filing of Defendants' Motion—providing copies of the Requests and corresponding judgments.

Defendants' Motion further states that Plaintiff filed his Requests "secretly," and "without notifying defendants' counsel." (Motion at 4.) This is false for a related but independent reason. As of the filing of the Requests, there was no "defendants' counsel." Defense Counsel had not appeared in this case, nor was she accepting service on behalf of the Defendants. Rather, as shown by **Exhibit B,** she had emailed Plaintiff's Counsel a single time, on September 14, 2022, stating that she would "potentially" represent the Defendants. Plaintiff's Counsel responded immediately with their e-service list, and attempted to follow up with Defense Counsel on September 21, 2022, but did not receive a response. (See **Exhibit C**.) Thus, as of September 21, 2022, when Plaintiff filed his Requests, Defense Counsel had not appeared on the record, filed any responsive pleading, nor confirmed that she was representing the Defendants. Plaintiff therefore had no obligation to serve her with copies of the Requests. Nevertheless, having not heard from Defense Counsel since September 14, 2022, Plaintiff informed her on September 21, 2022, that the Requests had been filed. Defense Counsel never responded to this email. (*Id.*) Yet Plaintiff still provided copies of the granted Requests as a courtesy on October 6, 2022, as shown by **Exhibit A**.

The Court should accordingly deny Defendants' motion because Defendants have failed to establish that the Defaults were entered as a result of their mistake, inadvertence, surprise, or excusable neglect.

C. <u>Defendants Had Actual Notice of the Action</u>

Defendants' Motion states that Defendant 5 Star K-9 Academy, Inc., was never served with a copy of the Summons and Complaint, and that no Proof of Service to that effect was ever filed with the Court. (Motion at 4.) This is false. Attached hereto as **Exhibit D** is a conformed copy of the Proof of Service of the Summons and Complaint as to 5 Star K-9 Academy, Inc., which Plaintiff filed with the Court on July 29, 2022.

/ / /

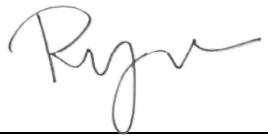
III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' Motion in its entirety. In the alternative, Plaintiff respectfully requests that the Court impose a stay on Plaintiff's action until an arbitration is completed in accordance with the order to arbitrate.

Respectfully submitted,

Dated: January 11, 2023

LOYR, APC



Young W. Ryu, Esq.
Joshua Park, Esq.
Henna H. Choi, Esq.
Attorneys for Plaintiff DYLAN YEISER-FODNESS

EXHIBIT A

Gmail

Harley Phleger <harley.phleger@loywr.com>

Re: Dylan Yeuser-Fodness Vs Master Dog Training 22STCV21852

Young W. Ryu <young.ryu@loywr.com> Thu, Oct 6, 2022 at 10:43 AM
To: Natalia Foley <nfoleylaw@gmail.com>
Cc: Harley Phleger <harley.phleger@loywr.com>

Please see attached, as a courtesy.

On Mon, Oct 3, 2022 at 12:52 PM Young W. Ryu <young.ryu@loywr.com> wrote:
> Tomorrow is the deadline to meet and confer on CMC. Will you take the service on behalf of the defendants?
>
> On Mon, Oct 3, 2022 at 12:39 PM Young W. Ryu <young.ryu@loywr.com> wrote:
> > I can talk now, or at 4pm please. My cell is (310) 365-6306.
> >
> > On Mon, Sep 26, 2022 at 1:50 PM Natalia Foley <nfoleylaw@gmail.com> wrote:
> > > Is it possible to talk on the phone?
> > > [Quoted text hidden]
> > > [Quoted text hidden]

2 attachments

10-5-22 - Judgment Granting Default (5 Star) - Dylan Yeiser-Fodness.pdf
621K

10-5-22 - Judgment Granting Default (KOROTUN) - Dylan Yeiser-Fodness.pdf
639K

EXHIBIT B

Gmail

Harley Phleger <harley.phleger@loywr.com>

Re: Dylan Yeuser-Fodness Vs Master Dog Training 22STCV21852

Young W. Ryu <young.ryu@loywr.com> Wed, Sep 21, 2022 at 12:06 PM
To: Natalia Foley <nfoleylaw@gmail.com>
Cc: Harley Phleger <harley.phleger@loywr.com>, Marlin Gramajo <marlin.gramajo@loywr.com>, Martha Gutierrez <martha.gutierrez@loywr.com>

Counsel,

Following up on the E-service list email inquiry sent to you on 9/14/22. Also, it is unclear what extension you wanted - Answer to the complaint? which is overdue and I believe the entry of default was already filed with. Responses to the Discovery? I think it is overdue also, meaning all objections are waived.

Lastly, please confirm with us if you will take the service of summons and complaint with Notice of Acknowledgement and Receipt on behalf of Master Dog Training.

YWR

[Quoted text hidden]

EXHIBIT C

Gmail

Harley Phleger <harley.phleger@loywr.com>

Re: Dylan Yeuser-Fodness Vs Master Dog Training 22STCV21852

Young W. Ryu <young.ryu@loywr.com> Wed, Sep 14, 2022 at 4:41 PM
To: Natalia Foley <nfoleylaw@gmail.com>
Cc: Harley Phleger <harley.phleger@loywr.com>, Marlin Gramajo <marlin.gramajo@loywr.com>, Martha Gutierrez <martha.gutierrez@loywr.com>

Please add the following to your e-service list, if you agree to communicate via email:

young.ryu@loywr.com
harley.phleger@loywr.com
marlin.gramajo@loywr.com
martha.gutierrez@loywr.com

Thanks.

On Wed, Sep 14, 2022 at 4:40 PM Natalia Foley <nfoleylaw@gmail.com> wrote:

> Hi Counsel
> I am an attorney who would potentially represent the defendants in the above case. I just received all the paperwork, and would like to ask for an extension so I can review the case. Also I would appreciate an opportunity to discuss the case with the handling attorney to evaluate a possibility of an early resolution.
> Please let me know when is a good time to call
> THank you
>
> **NATALIA FOLEY,. Esq**
>
> **Law Offices of Natalia Foley**
>
> **Workers Defenders Law Group**
>
> 751 S WEIR CANYON RD STE 157-455
>
> ANAHEIM CA 92808
>
> Cell: 310 707 8098
>
> Tel: 714 948 5054
>
> Fax: 310 626 9632
>
> email: workerlegalinfo@gmail.com
>
> email: nfoleylaw@gmail.com
>
> **https://www.facebook.com/WorkersDefenders**
>
> http://nataliafoleylaw.com
>
> "Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to $50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine." (Lab. Code § 5432(a); Ins. Code § 1871.4)

Conference meetings by appointments only:

155 N Riverview Dr

Anaheim CA 92808

Book Appointment: https://workerlegal.acuityscheduling.com/schedule.php

EXHIBIT D

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Young Ryu SBN 266372
LOYR, APC
3130 Wilshire Blvd 209
Los Angeles, CA 90010
TELEPHONE NO.: **(888) 365-8686** FAX NO. *(Optional)*:
E-MAIL ADDRESS *(Optional)*: **young.ryu@loywr.com**
ATTORNEY FOR *(Name)*: **Plaintiff**

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
STREET ADDRESS: 111 N Hill St.
MAILING ADDRESS: 111 N Hill St.
CITY AND ZIP CODE: Los Angeles, CA 90012
BRANCH NAME: STANLEY MOSK

PLAINTIFF/PETITIONER: Dylan Yeiser-Fodness
DEFENDANT/RESPONDENT: Master Dog Training, et al.

CASE NUMBER: 22STCV21852

PROOF OF SERVICE SUMMONS

Ref. No. or File No.: 22STCV21852

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of: ***Complaint; Summons; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Peremptory Challenge; ADR Information Packet***

3. a. Party served *(specify name of party as shown on documents served)*: ***5 Star K-9 Academy, Inc., a California corporation***

   b. [x] Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) *(specify name and relationship to the party named in item 3a)*: **By Serving Ekaterina Korotun, Agent for Service**

4. Address where the party was served: ***5502 Penfield Ave, Woodland Hills, CA 91364***

5. I served the party *(check proper box)*
   a. [ ] **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: (2) at:
   b. [x] **by substituted service.** On: **7/27/2022** at: **11:00 AM** I left the documents listed in item 2 with or in the presence of *(name and title or relationship to person indicated in item 3)*:
   John Doe (Gender: M Age: 40 Height: 5'8" Weight: 150 Race: Caucasian Hair: Other:)
   Co-occupant

   (1) [ ] **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.

   (2) [x] **(home)** a competent member of the household (at least 18 years of age) at the dweling house or usual place of abode of the party. I informed him or her of the general nature of the papers.

   (3) [ ] **(physical address unknown)** a person of at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.

   (4) [ ] I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents:
   on: from: **or** [x] a declaration of mailing is attached.

(5) [X] I attach a **declaration of diligence** stating actions taken first to attempt personal service.

5. c. [ ] **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on: (2) from:

(3) [ ] with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed* Notice and Acknowledgment of Receipt.) (Code Civ. Proc., § 415.30.)

(4) [ ] to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d. [ ] **by other means** *(specify means of service and authorizing code section):*

[ ] Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

a. [ ] as an individual defendant.

b. [ ] as the person sued under the fictitious name of *(specify):*

c. [ ] as occupant.

d. [x] On behalf of *(specify):* **5 Star K-9 Academy, Inc., a California corporation** under the following Code of Civil Procedure section:

[x] 416.10 (corporation)	[ ] 415.95 (business organization, form unknown)
[ ] 416.20 (defunct corporation)	[ ] 416.60 (minor)
[ ] 416.30 (joint stock company/association)	[ ] 416.70 (ward or conservatee)
[ ] 416.40 (association or partnership)	[ ] 416.90 (authorized person)
[ ] 416.50 (public entity)	[ ] 415.46 (occupant)
	[ ] other:

7. **Person who served papers**

a. Name: **Gerald Thompson**
b. Address: **7162 Beverly Blvd Suite 508, Los Angeles, CA 90036**
c. Telephone number: **800-687-5003**
d. **The fee** for service was: **$80.00**
e. I am:
(1) [ ] not a registered California process server.
(2) [ ] exempt from registration under Business and Professions Code section 22350(b).
(3) [x] a registered California process server:
(i) [ ] owner [ ] employee [x] independent contractor.
(ii) Registration No.: **1175**
(iii) County: **Los Angeles**

8. [x] **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Gerald Thompson Date: **07/27/2022**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NUMBER	FOR COURT USE ONLY
Young Ryu SBN 266372 **LOYR, APC** **3130 Wilshire Blvd 209** **Los Angeles, CA 90010** ATTORNEY FOR **Plaintiff**	**(888) 365-8686**	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES 111 N Hill St. Los Angeles, CA 90012		
SHORT TITLE OF CASE: Yeiser-Fodness, Dylan v. Korotun, Ekaterina		
DATE: TIME: DEP./DIV.		CASE NUMBER: 22STCV21852
Declaration of Reasonable Diligence		Ref. No. or File No: 22STCV21852

Person to Serve: **5 Star K-9 Academy, Inc, a California corporation**

Documents Received: **Complaint; Summons; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Peremptory Challenge; ADR Information Packet**

I declare the following attempts were made to effect personal service, no other residence or business address is known to me:

Jul 13 2022 04:30 PM	19401 Parthenia St Apt 4082, Northridge, CA 91324; Status Update: Secured apartment building. Was able to gain access to building, but no answer at the unit. Subject not listed on the intercom.
Jul 14 2022 07:20 AM	19401 Parthenia St Apt 4082, Northridge, CA 91324; Status Update: Unable to gain access to secured building. Waited.
Jul 16 2022 02:00 PM	19401 Parthenia St Apt 4082, Northridge, CA 91324; Status Update: Unable to gain access to secured building. Waited.
Jul 17 2022 08:10 AM	19401 Parthenia St Apt 4082, Northridge, CA 91324; Status Update: Unable to gain access to secured building. Waited.
Jul 19 2022 01:35 PM	5502 Penfield Ave, Woodland Hills, CA 91364; Status Update: Secured front gate. Unable to get to front door. No bell or callbox. 2 cars with LP#: 8JDG677 (red tesla) & CD63934 (white tesla). Packages with Deft.'s names with 2 other packages for 2 different people for Maxim Dasvro & Elena Korotun.
Jul 19 2022 06:40 PM	5502 Penfield Ave, Woodland Hills, CA 91364; Status Update: Same as last attempt. Cars had not been moved.
Jul 21 2022 07:00 AM	5502 Penfield Ave, Woodland Hills, CA 91364; Secured front gate. Unable to get to front door. No bell or callbox. Cars still in driveway.
Jul 23 2022 10:40 AM	5502 Penfield Ave, Woodland Hills, CA 91364; Status Update: Secured front gate. Unable to get to front door. No bell or callbox. Cars still in driveway.
Jul 27 2022 11:00 AM	19401 Parthenia St Apt 4082, Northridge, CA 91324; Sub-Served on co-occupant, John Doe

Person attempting service:

a. Name: **Gerald Thompson**
b. Address: **7162 Beverly Blvd Suite 508, Los Angeles, CA 90036**
c. Telephone number: **800-687-5003**
d. **The fee** for this service was: **80.00**
e. I am an independent contractor:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Gerald Thompson Date: **07/27/2022**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address)	TELEPHONE NUMBER	FOR COURT USE ONLY
Young Ryu SBN 266372 **LOYR, APC** **3130 Wilshire Blvd 209** **Los Angeles, CA 90010** ATTORNEY FOR **Plaintiff**	**(888) 365-8686**	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES 111 N Hill St. Los Angeles, CA 90012		
SHORT TITLE OF CASE: Yeiser-Fodness, Dylan v. Korotun, Ekaterina		
DATE: TIME: DEP./DIV.		CASE NUMBER: 22STCV21852
Proof of Service by Mail		Ref. No. or File No: 22STCV21852

I am a citizen of the United States and employed in the County of **Los Angeles** State of California. I am and was on the dates herein mentioned, over the age of eighteen years and not a party to the action.

On **07/27/2022** after substituted service was made, I served the within:

Complaint; Summons; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Peremptory Challenge; ADR Information Packet

On the defendant, in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon pre-paid for first class in the United States mail At: **Los Angeles**, California, addressed as follows:
5 Star K-9 Academy, Inc, a California corporation
5502 Penfield Ave, Woodland Hills, CA 91364

Person attempting service:

a. Name: **Walter Lee**
b. Address: **7162 Beverly Blvd Suite 508, Los Angeles, CA 90036**
c. Telephone number: **800-687-5003**
d. **The fee** for this service was: **80.00**
e. I am:
(3) Not a registered California process server:
(i) [X] Employee
(ii) Registration No.:
(iii) County: **Los Angeles**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Walter Lee

Walter Lee Date: **07/27/2022**

LOYR, APC
1055 West 7th Street, Suite 2290
Los Angeles, CA 90017
Tel.: (213) 318-5323 | Fax: (800) 576-1170

PROOF OF SERVICE

I am over 18 years old and not a party to this action. My business address is 1055 West 7th Street, Suite 2290, Los Angeles, California 90017.

On January 11, 2023, I served the following documents in a sealed envelope on the interested party as follows:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO SET ASIDE DEFAULT

Natalia Foley
nfoleylaw@gmail.com
LAW OFFICES OF NATALIA FOLEY
751 S Weir Canyon Rd Ste 157-455
Anaheim CA 92808

Attorney for Defendants

☑ **BY U.S. MAIL:**
I enclosed the foregoing document in a sealed envelope to the interest parties at the address listed above and deposited the sealed envelope for collection and mailing following my firm's ordinary business practices. I am readily familiar with my firm's business practices for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit.

☑ **BY ELECTRONIC SERVICE:**
My electronic service address is martha.gutierrez@loywr.com. Per the parties' agreement, through their respective counsel, to accept electronic service and pursuant to California Code of Civil Procedure section 1010.6, I served the foregoing document on the interested party at the electronic service addresses (e-mail addresses) listed above and did not receive Notice of Failure

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 11, 2023, in Los Angeles, California.

Martha Gutierrez

PROOF OF SERVICE