

1 ALAN R. BRAYTON, ESQ., S.B. #73685  
2 DAVID R. DONADIO, ESQ., S.B. #154436  
3 CHRISTINE A. RENKEN, ESQ., S.B. #232797  
4 crenken@braytonlaw.com  
5 BRAYTON◆PURCELL LLP  
6 Attorneys at Law  
7 222 Rush Landing Road  
P.O. Box 6169  
Novato, California 94948-6169  
(415) 898-1555  
8  
9 Attorneys for Plaintiff

ELECTRONICALLY  
**FILED**

*Superior Court of California,  
County of San Francisco*

**09/02/2021**  
**Clerk of the Court**  
BY: YOLANDA TABO-RAMIREZ  
Deputy Clerk

8  
9  
10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO

13  
14 YSIDRO LIMON, SR., )  
15 Plaintiff, ) ASBESTOS  
vs. ) No. CGC-15-276378  
16 AMCORD, INC., et al., )  
17 Defendants. ) PLAINTIFF'S OPPOSITION TO  
18 ) SPECIALLY APPEARING AND  
19 ) [PROPOSED] INTERVENOR GREAT  
20 ) AMERICAN INSURANCE COMPANY'S  
21 ) MOTION TO VACATE AND SET ASIDE  
22 ) DEFAULT AND DEFAULT JUDGMENT  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Date: September 16, 2021  
Time: 9:30 a.m.  
Dept.: 503, Hon. Cynthia Ming-Mei Lee

## TABLE OF CONTENTS

2	I.	INTRODUCTION .....	1
3	II.	GREAT AMERICAN INSURANCE'S MOTION SHOULD BE DENIED IN PART AND ONLY GRANTED TO SET ASIDE THE DEFAULT JUDGMENT AGAINST ITSELF .....	2
4	A.	THE DEFAULT AGAINST CF BOLSTER SHOULD NOT BE SET ASIDE AT ALL .....	3
5	1.	The Default Should Not be Set Aside as Against Great American Insurance .....	4
6	2.	The Default Should Not be Set Aside as Against CF Bolster .....	6
7	B.	THE DEFAULT JUDGMENT AGAINST CF BOLSTER SHOULD ONLY BE SET ASIDE TO THE EXTENT IT IS ENFORCEABLE AGAINST GREAT AMERICAN INSURANCE .....	7
8	C.	IF THE DEFAULT JUDGMENT IS SET ASIDE, GREAT AMERICAN INSURANCE MUST FILE ITS ANSWER-IN-INTERVENTION AND SHOULD PRODUCE ALL RELEVANT INSURANCE POLICIES .....	10
9	III.	CONCLUSION .....	11

## TABLE OF AUTHORITIES

## 2 | CASES

3	<i>Airline Transport Carriers, Inc. v. Batchelor</i> (1951) 102 Cal.App.2d 241 . . . . .	7, 8
4	<i>Cruz v. Fagor America, Inc.</i> (2006) 146 Cal.App.4th 488 . . . . .	3
5	<i>Favila v. Katten Muchin Rosenman LLP</i> (2010) 188 Cal.App.4th 189 . . . . .	8
6	<i>Greathouse v. Amcord, Inc.</i> (1995) 35 Cal.App.4th 831 . . . . .	10
7	<i>Jade K. v. Viguri</i> (1989) 210 Cal.App.3d 1459 . . . . .	5, 6
8	<i>Koski v. U-Haul Co.</i> (1963) 212 Cal.App.2d 640 . . . . .	7
9	<i>Kulchar v. Kulchar</i> (1969) 1 Cal.3d 467 . . . . .	3
10	<i>McCreadie v. Arques</i> (1967) 248 Cal.App.2d 39 . . . . .	3, 4
11	<i>Mechling v. Asbestos Defendants</i> (2018) 29 Cal.App.5th 1241 . . . . .	5
12	<i>Olivera v. Grace</i> (1942) 19 Cal.2d 570 . . . . .	3
13	<i>Penasquitos, Inc. v. Superior Court</i> (1991) 53 Cal.3d 1180 . . . . .	8
14	<i>People v. Meza</i> (2019) 38 Cal.App.5th 821 . . . . .	5
15	<i>Pulte Homes Corp. v. Williams Mechanical, Inc.</i> (2016) 2 Cal.App.5th 267 . . . . .	7
16	<i>Rappleyea v. Campbell</i> (1994) 8 Cal.4th 975 . . . . .	3, 4, 6, 7
17	<i>Reager v Bahrs</i> (1909) 11 Cal.App.234 . . . . .	4
18	<i>Reliance Ins. Co. v. Superior Court</i> (2000) 84 Cal.App.4th 383 . . . . .	4, 6
19	<i>Tunis v. Barrow</i> (1986) 184 Cal.App.3d 1069 . . . . .	7
20	<i>Western Heritage v. Superior Court</i> (2011) 199 Cal.App.4th 1196 . . . . .	4, 6
21		
22	<b><u>STATUTES</u></b>	
23	California Civil Code § 3532 . . . . .	4
24	California Code of Civil Procedure § 473(b) . . . . .	3
25	California Code of Civil Procedure § 887 . . . . .	9
26	California Corporations Code § 1702 . . . . .	7
27	California Corporations Code § 2011(b) . . . . .	7

1                   TABLE OF AUTHORITIES (Cont'd.)

2                   OTHER AUTHORITY

3 California Rules of Court, Rule 8.115 .....	5
---	---

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 I. INTRODUCTION

2 Specially Appearing Great American Insurance Company (“Great American Insurance”)  
3 seeks to set aside the default and default judgment against defendant CF Bolster in their entirety  
4 and to allow it to file an answer in the name of CF Bolster, a dissolved entity possibly with no  
5 officers or directors. Great American Insurance asks to participate in this case on behalf of its  
6 dissolved insured, but without intervening itself. While plaintiff agrees that the default judgment  
7 may be set aside to the extent it could be enforceable against Great American Insurance if it  
8 intervenes, Great American Insurance’s request to set aside the default and default judgment in  
9 their entirety and allow it to answer in CF Bolster’s name is unsupported by, and in fact contrary  
10 to, the relevant authority.

11 Great American Insurance does not contend that service on CF Bolster was improper. It  
12 only contends that because Great American Insurance did not also receive notice of the default  
13 and default judgment, the judgment should be set aside not only against Great American  
14 Insurance, but also against CF Bolster and any of its other insurers. Great American Insurance  
15 cites no on-point authority to support its request and instead relies on speculation about what  
16 might happen in the future should plaintiff obtain a judgment and should Great American  
17 Insurance pay the judgment. Great American Insurance bears the burden of establishing that it is  
18 appropriate and necessary for the court to set aside the entire default and default judgment. It  
19 has failed to meet this burden.

20 Great American Insurance fails to establish that it has standing to challenge the  
21 underlying default and default judgment as it may be enforced against anyone other than Great  
22 American Insurance. Great American Insurance has not shown that it has authority from CF  
23 Bolster to represent its interests. Great American Insurance has only admitted to issuing  
24 insurance policies for some of the years of exposure and has only agreed to defend CF Bolster  
25 under a reservation of rights. And Great American Insurance has not admitted or stipulated to  
26 paying any judgment in full.

27 Great American Insurance may even try to withdraw its defense and answer-in-  
28 intervention. In fact, this has happened to plaintiffs’ counsel before as a trial was starting - an

1 insurance company withdrew its defense and answer-in-intervention, and those plaintiffs were  
2 forced to start the entire default and default judgment over. Here, and at this point, the default is  
3 unenforceable against Great American Insurance. It is only proper at most to set aside the default  
4 judgment for enforcement purposes against Great American Insurance only. It is improper and  
5 there is no authority that requires the court to set aside the default and default judgment for  
6 purposes of enforcement against CF Bolster, any alter egos, or other insurance companies.

7 If the default judgment against CF Bolster is set aside for purposes of enforcement  
8 against Great American Insurance, then Great American Insurance must, with leave of this court,  
9 immediately file its Answer-in-Intervention to the complaint. Plaintiff also requests that if Great  
10 American be permitted to intervene, it be ordered to produce all relevant insurance policies  
11 immediately.

12 II. **GREAT AMERICAN INSURANCE'S MOTION SHOULD BE DENIED IN PART  
AND ONLY GRANTED TO SET ASIDE THE DEFAULT JUDGMENT AGAINST  
ITSELF**

---

14 Plaintiff does not oppose an order stating: "The entry of default entered against CF  
15 Bolster is not set aside, but is unenforceable against Great American Insurance as the insurer of  
16 CF Bolster. The default judgment is set aside as to the interests of Great American Insurance  
17 only and shall not be used or enforced against Great American Insurance. Otherwise the default  
18 judgment remains in place. Great American Insurance is to file an answer-in-intervention and  
19 produce the relevant insurance policies to plaintiff within 10 days of the date of this order." Any  
20 terms beyond these should not be ordered.

21 Great American Insurance argues that its good faith obligations require it to seek the  
22 relief it acknowledges is "broad." But it fails to specify what "good faith obligation" it would be  
23 violating should the court keep the underlying default and default judgment against all others in  
24 place. The issue is not about speculative "what ifs." The issue is whether Great American  
25 Insurance is currently fulfilling its good faith obligations. And it appears it is. It is seeking to  
26 defend CF Bolster and intervene in this case. There is currently no issue whether Great  
27 American Insurance will fulfil its duty to defend or settle, and if the parties do settle, it is likely  
28 Great American Insurance will seek a complete release from all of the plaintiffs.

1        Importantly, Great American Insurance has not admitted or stipulated to paying any  
2 judgment in full. Without doing so, plaintiff would be forced to seek other insurance coverage  
3 for the remainder of any judgment. Right now, there is a judgment in effect, which allows  
4 plaintiff to seek discovery as a judgement debtor, including search for other insurance. But if the  
5 default judgment is set aside in its entirety, plaintiff will lose that protection to search for other  
6 insurance coverage.

7            A.     **THE DEFAULT AGAINST CF BOLSTER SHOULD NOT BE SET ASIDE AT  
8 ALL**

---

9        Great American Insurance has not shown that it would be proper, or that it has standing  
10 to seek, to set aside the default against CF Bolster in any respect. As acknowledged by Great  
11 American Insurance, plaintiff had default entered on May 13, 2015. (Great American  
12 Insurance's Exhibit F.) Great American Insurance does not contend that either service on CF  
13 Bolster through the California Secretary of State or the entry of default were improper. As more  
14 than six months have passed, the default may not be set aside pursuant to Code of Civil  
15 Procedure section 473(b).

16        Thus, as Great American Insurance acknowledges, it may only seek relief on the grounds  
17 of "extrinsic fraud or mistake." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 576; *Rappleyea v.*  
18 *Campbell* (1994) 8 Cal.4th 975, 981.) The *Rappleyea* court stressed that a stringent test to  
19 qualify for equitable relief from default on the basis of "extrinsic mistake" must be met. As  
20 Great American Insurance correctly contends, there are three essential requirements to obtain  
21 relief. Great American Insurance must show: (1) a meritorious defense; (2) a satisfactory excuse  
22 for not presenting a defense to the original action; and (3) diligence in seeking to set aside the  
23 default once it was discovered. (*Rappleyea, supra*, 8 Cal.4th 975, 982.)

24        Indeed, relief on the ground of extrinsic fraud or mistake is not available to a party who  
25 has been given notice of the action yet fails to appear, unless he or she was prevented from  
26 participating in the action. (*Kulchar v. Kulchar* (1969) 1 Cal.3d 467, 472; *Cruz v. Fagor*  
27 *America, Inc.* (2006) 146 Cal.App.4th 488, 502.) Moreover, since the equitable power of the  
28 Court is being sought, such relief is subject to equitable defenses, including laches. (*McCreadie*

1 *v. Arques* (1967) 248 Cal.App.2d 39, 46-47.) Relief may be denied if it is shown that the  
2 moving party has been guilty of unreasonable delay in seeking relief, causing prejudice to the  
3 opposing party. (*Ibid.*)

## 1. The Default Should Not be Set Aside as Against Great American Insurance

6 While plaintiff disputes and does not agree with Great American Insurance's  
7 characterization of the merits of the case, plaintiff does not dispute that Great American  
8 Insurance has satisfied the three *Rappleyea* requirements as to itself. Plaintiff does, however,  
9 dispute and take offense at Great American Insurance's improper and unsupported assertion that  
10 plaintiff "strategically declined to notify Great American." (See Great American Insurance's  
11 memorandum, at pg. 15:24-26.) Great American Insurance includes no evidentiary support for  
12 the assertion. And in fact, it is contrary to common sense. Plaintiff does not have possession of  
13 Great American Insurance's policies. And plaintiff is the one who ultimately loses when years  
14 go past, witnesses die and memories fade. As soon as plaintiff learned that Great American  
15 Insurance may have issued an insurance policy, he notified Great American Insurance.

16        Regardless of whether Great American Insurance itself has satisfied the *Rappleyea*  
17 requirements, the entry of default against CF Bolster should not be set aside at all given it is  
18 unenforceable against Great American Insurance as an insurer of CF Bolster. The default  
19 entered against CF Bolster has no effect on Great American Insurance as its insurer, and Great  
20 American Insurance is not bound by a default taken against its insured. (*See Western Heritage v.*  
21 *Superior Court* (2011) 199 Cal.App.4th 1196, 1211 [“an insurer intervening in an action to  
22 pursue its own interests after its insured has defaulted is not required to move to vacate the  
23 insured’s default as to itself; the insured’s default simply has no effect on the insurer.”]; *see also*  
24 *Reliance Ins. Co. v. Superior Court* (2000) 84 Cal.App.4th 383.) As such, Great American  
25 Insurance lacks standing to challenge a default that has no effect on it. And the law neither does  
26 nor requires idle acts. (Civ. Code § 3532; *see also Reager v Bahrs* (1909) 11 Cal.App. 234, 237  
27 [A court will not exercise a power for no material or useful purpose].)

28 | //

1        While the court of appeal did affirm a lower court order that ultimately set aside the  
2 default and default judgment against an insurance company in *Mechling v. Asbestos Defendants*  
3 (2018) 29 Cal.App.5th 1241, the facts of that case are distinguishable such that they do not  
4 dictate a certain result here. In *Mechling*, the insurance company did not seek to defend in the  
5 name of its insured. The insurance company located insurance policies that appeared to provide  
6 coverage, intervened and retained counsel to defend. (*Id.* at 1244 and 1248.) There is no  
7 indication whether the exposure at issue in *Mechling* occurred outside of the insurance coverage  
8 period. And importantly, there is no indication that the plaintiff in *Mechling* argued or the court  
9 considered whether the default itself needed to be set aside as against the insurance company.  
10 Here, of course, plaintiff does argue that the default should not be set aside.

11        In fact, *Mechling* held “[w]e conclude the court did not abuse its discretion by granting  
12 the motions to set aside the default judgments.” (*Id.* at 1246, emphasis added.) And the cases  
13 *Mechling* cites to only address setting aside the default judgment. (See *id.* at 1245-46 and 1248-  
14 49.) Perhaps this is because *Mechling* knew the default itself had no effect on the insurer. But  
15 regardless of why, “[t]he holding of a decision is limited by the facts of the case being decided,  
16 notwithstanding the use of overly broad language by the court in stating the issue before it or its  
17 holding or in its reasoning.’ [Citation.] An opinion is authority only on the point decided, and  
18 language that sweeps more broadly is dictum, with no binding force. (*People v. Meza* (2019) 38  
19 Cal.App.5th 821, 827-28.)

20        Plaintiff will not address the substance of the unpublished cases improperly cited to by  
21 Great American Insurance. (Cal. Rules of Court, Rule 8.115.) However, plaintiff disputes that  
22 any of the unpublished cases dictate setting aside the default itself as against Great American  
23 Insurance for the same reasons set forth above pertaining to *Mechling*.

24        *Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459 also does not assist Great American  
25 Insurance. Contrary to Great American Insurance’s representation (see pg. 16:15-18 of its  
26 memorandum), in *Jade K.*, the insurer moved to set aside only the *default judgment*. (*Id.* at 1463  
27 and 1464.) *Jade K* included no discussion that setting aside the underlying default was necessary  
28 for the insurance company. (*Id.* at 1468-74.) Plaintiff agrees that setting aside the default

1 judgment is all that was needed in *Jade K* and is needed here.

2 Great American Insurance may intervene, but the default should remain. Great American  
3 Insurance has neither standing nor reason to set aside the default against a dissolved corporation  
4 whose principals could not be located, and according to Great American Insurance are deceased,  
5 and therefore incapable of participating in this proceeding. While Great American Insurance is  
6 certainly entitled to intervene and maintain a reservation of rights, this does not mean that it is  
7 entitled to set aside the default.

8 And Great American Insurance may set aside a default judgment that could be used  
9 against it, but should not set aside the default itself. “A party permitted to intervene is permitted  
10 to do so in order to pursue *its own interests*. Once permitted to intervene, it is a party to the  
11 action not bound by other parties’ procedural defaults.” (*Western Heritage, supra*, 199  
12 Cal.App.4th at 1207, emphasis in original.) Great American Insurance’s interests only extend as  
13 far as a judgment exists - not a default. (*See Reliance Ins. Co., supra*, 84 Cal.App.4th at 386-  
14 87.) And if the default judgment is set aside as to any enforcement against Great American  
15 Insurance, Great American Insurance is not subject to direct action under Insurance Code  
16 Section 11580 and has no interest in the default. (*Ibid.*)

17 2. The Default Should Not be Set Aside as Against CF Bolster

18 The default should also not be set aside as to CF Bolster as Great American Insurance  
19 makes no showing that it has standing to make this request. Great American Insurance has not  
20 shown that it has been authorized to appear on behalf of CF Bolster. Great American Insurance  
21 fails to establish that CF Bolster requested Great American Insurance or Berkes Crane Robinson  
22 & Seal LLP to represent it in this action. Great American Insurance also has not stated that it  
23 accepts complete liability for CF Bolster, which it should be obligated to do to appear in CF  
24 Bolster’s name (assuming it also obtains authorization from CF Bolster).

25 In addition, Great American Insurance fails to establish that CF Bolster satisfies any of  
26 the *Rappleyea* requirements. There is especially no showing in Great American Insurance’s  
27 moving papers that CF Bolster has a satisfactory excuse for not presenting a defense to the  
28 original action or has acted diligently to set aside the default once it was discovered. And Great

1 American Insurance's own actions cannot be imputed to its insured. Great American Insurance  
2 must show that CF Bolster has met the *Rappleyea* requirements. Should Great American  
3 Insurance argue that CF Bolster satisfies the *Rappleyea* requirements in its reply, such argument  
4 should be struck as it should have been made in its moving papers so that plaintiff could  
5 adequately address them.

6 In its moving papers, Great American Insurance only argues that CF Bolster could not  
7 have had "actual notice" of the action because it was served through the Secretary of State, but  
8 cites no authority for the assertion. In fact, a corporation receives actual notice only through its  
9 agent. (*Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 274.) As  
10 plaintiff could not locate any officer, director, or identified agent of CF Bolster, plaintiff's only  
11 option was to serve CF Bolster through the California Secretary of State. (See Corp. Code §§  
12 1702 and 2011(b); *see also* Great American Insurance's Exhibit J - Declaration of Nancy T.  
13 Williams in support of application for entry of default judgment against defendant C.F. Bolster  
14 Company, and Exhibit B attached thereto.)

15 Service through the Secretary of State is considered personal service upon the defendant  
16 and sufficient to show actual notice of the action. (*See Tunis v. Barrow* (1986) 184 Cal.App.3d  
17 1069, 1079-80 [actual notice may be received through service upon the Secretary of State and it  
18 is the moving party's burden to show that the corporate defendant did not receive notice from the  
19 Secretary of State]; *see also Koski v. U-Haul Co.* (1963) 212 Cal.App.2d 640, 644 .) Great  
20 American Insurance fails to submit any evidence that CF Bolster did not receive actual notice of  
21 the complaint. And while Great American Insurance argues that there were no principals alive to  
22 receive notice, it fails to submit any evidence to support such a claim. Accordingly, the default  
23 should not be set aside at all.

24       B.     THE DEFAULT JUDGMENT AGAINST CF BOLSTER SHOULD ONLY BE  
25           SET ASIDE TO THE EXTENT IT IS ENFORCEABLE AGAINST GREAT  
          AMERICAN INSURANCE

---

26       None of the cases Great American Insurance cites, including three unpublished cases,  
27 support its request to set aside the default judgment entered against CF Bolster as to CF Bolster,  
28 alter egos, and any other unknown insurance companies.

1       Great American Insurance's reliance on *Airline Transport Carriers, Inc. v. Bachelor*  
2 (1951) 102 Cal.App.2d 241, 245, to support its request is misplaced. Contrary to Great  
3 American Insurance's implication, *Airline Transport Carriers* does not concern a matter  
4 involving an insurance company trying to set aside a default or default judgment for an insured –  
5 *Airline Transport Carrier* does not even mention insurance or insurers. In *Airline Transport*  
6 *Carriers*, the defendant had a default and default judgment entered against him. (*Id.* at 242.)  
7 After the trial court granted defendant's motion to set aside the default judgment, another default  
8 judgment was entered because the underlying default had not been set aside. (*Ibid.*) The trial  
9 court denied defendant's motion to correct the court order to also set aside the default. (*Id.* at  
10 242-43.) In holding that the trial court erred, the court of appeal reviewed several cases,  
11 including one that stated that setting aside the default "judgment alone . . . would have been an  
12 idle act, because the default . . . would have stood undisturbed. (*Id.* at 245.)

13       So while it is true that *Airline Transport Carriers* supports the proposition that a  
14 defendant needs to have both the default and default judgment set aside to obtain complete relief,  
15 as Great American Insurance asserts, the case does not support Great American Insurance's  
16 requested relief. This makes sense given a defendant will need the default set aside in order to  
17 file an answer and participate in the action. On the other hand, Great American Insurance can  
18 easily participate in the action and defend its insured by intervening. There is no need to set  
19 aside the default or default judgment against those other than Great American Insurance.

20       Great American Insurance's reliance on *Penasquitos, Inc. v. Superior Court* (1991) 53  
21 Cal.3d 1180, 1190, is equally misplaced. Plaintiff does not dispute that dissolved corporations  
22 may defend lawsuits against it through counsel. But *Penasquitos* does not involve a default or  
23 default judgment, or any insurance company that is trying to intervene or appear on *Penasquitos'*  
24 behalf. For *Penasquitos* to have any relevance, the issue would need to be whether CF Bolster  
25 itself could defend a lawsuit against it through counsel. But with no principals, either because  
26 they could not be found or they are all deceased, CF Bolster cannot appear itself and defend.  
27 (See *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 219 [the ongoing  
28 management personnel are the ones authorized to act on a dissolved corporation's behalf during

1 a windup process].)

2        In fact, this court and other Courts have consistently limited the setting aside of a default  
3 judgment to the interests of the intervenor only, leaving the judgment in place for the purposes of  
4 enforcement against other possible parties such as alter egos or other insurance providers. This  
5 avoids the necessity of having to repeat court proceedings to establish the amount of the  
6 judgment and wasting the time and resources of the Court.

7        Great American Insurance argues that allowing the default and default judgment to  
8 remain in place against CF Bolster and other insurers is unnecessary and has the potential to  
9 create several issues. While Great American Insurance asserts that plaintiff will be awarded the  
10 full amount to which he is entitled and allowing the default and default judgment to remain in  
11 place against CF Bolster and other insurers would allow plaintiff to obtain a double recovery,  
12 this is not correct. As previously mentioned, Great American Insurance states that it issued  
13 insurance policies to CF Bolster for coverage between January 1, 1974 - January 1, 1977 and  
14 July 1, 1979 - July 1, 1982 and Great American Insurance is willing to appear with a reservation  
15 of rights. This means that at or before trial, depending on the language of the insurance  
16 policy(ies) at issue, Great American Insurance may contend that it is not liable for all of the  
17 exposure so it should not be responsible for all of a judgment. Plaintiff anticipates that Great  
18 American Insurance may attempt to argue in its reply that the "all sums" language of general  
19 liability policies may preclude it from making this argument, but it has not produced the  
20 operative insurance policies to establish this.

21        Great American Insurance attaches a conditional opposition plaintiffs in another case  
22 filed regarding another defendant, but it is consistent with plaintiff's request and opposition here.  
23 Plaintiff is not attempting to obtain double recovery. Plaintiff is only attempting to protect  
24 himself from the above-stated scenarios.

25        Should Great American Insurance go to trial and obtain a defense verdict, and even if  
26 plaintiff did attempt to proceed against an alter ego or other insurers, which plaintiff would not,  
27 that alter ego or insurer would rely on res judicata and/or collateral estoppel.

28 ///

1       Great American Insurance's other "what if's" - that other insurers may come after it for  
2 equitable indemnity or subrogation - is also an insufficient reason to grant its motion. Should  
3 Great American Insurance go to trial and plaintiff obtain a judgment, there would be no basis for  
4 another insurance company to go after Great American Insurance for equitable indemnity or  
5 subrogation unless that other insurance company paid a judgment and Great American  
6 Insurance's contribution to a judgment was less than it should have paid. And if Great American  
7 Insurance's policy limits are less than the judgment and plaintiff proceeds against any other  
8 insurance companies, the other insurance companies would be entitled to a setoff for past  
9 settlements pursuant to Code of Civil Procedure section 887 and *Greathouse v. Amcord, Inc.*  
10 (1995) 35 Cal.App.4th 831.

11       Should the court set aside the entire default and default judgment, it also means that  
12 Great American Insurance may withdraw its answer-in-intervention, relying on its reservation of  
13 rights, and plaintiff would be left without any default or default judgment. This has happened to  
14 plaintiff's counsel in another case and those plaintiffs had to start the entire process over,  
15 incurring double the costs. This would most certainly be a waste of judicial resources when the  
16 current default and default judgment can merely stay in effect against CF Bolster, any alter egos,  
17 and insurers other than Great American Insurance.

18       C.     **IF THE DEFAULT JUDGMENT IS SET ASIDE, GREAT AMERICAN**  
19       **INSURANCE MUST FILE ITS ANSWER-IN-INTERVENTION AND**  
20       **SHOULD PRODUCE ALL RELEVANT INSURANCE POLICIES**

---

21       Upon being granted leave of Court, Great American Insurance should be allowed and  
22 ordered to intervene in this action on behalf of its insured CF Bolster by filing its answer-in-  
23 intervention, and should file its answer-in-intervention immediately. Otherwise, if no answer is  
24 filed, plaintiff would be compelled to again seek a default judgment for all purposes since this  
25 action would remain active and open without anyone answering or appearing in defense of the  
26 action. The default judgment against the interests of Great American Insurance should not be set  
27 aside unless it intervenes and appears to defend the action. Otherwise, setting aside the default  
judgment serves no valid purpose.

28       ///

1       Great American Insurance should also be ordered to produce all relevant insurance  
2 policies so the parties can determine immediately what terms will govern Great American  
3 Insurance's involvement.

4       III.     CONCLUSION

5       While plaintiff does not oppose setting aside the default judgment only as it may be  
6 enforced against Great American Insurance, there is no authority or reason to set aside the  
7 default at all or the default judgment as it may be enforced against CF Bolster, alter egos, or any  
8 other insurance companies. Plaintiff also opposes Great American Insurance's request to answer  
9 in the name of CF Bolster as it has failed to show that it has authorization from CF Bolster to  
10 answer in its name and has failed to state that it accepts complete liability for any judgment  
11 against CF Bolster.

12       If the default judgment is set aside only as it may be enforced against Great American  
13 Insurance, as plaintiff argues, Great American Insurance should be ordered to file its answer-in-  
14 intervention and produce all relevant insurance policies immediately.

15 Dated: September 2, 2021

BRAYTON♦PURCELL LLP

16

17

By: /s/ Christine A. Renken  
Christine A. Renken  
Attorneys for Plaintiff

19

20

21

22

23

24

25

26

27

28

1                   PROOF OF SERVICE BY FILE & SERVEXPRESS

2                   I am employed in the County of Marin, State of California. I am over the age of 18 years  
3 and am not a party to the within action. My business address is 222 Rush Landing Road, P.O.  
3 Box 6169, Novato, California, 94948-6169.

4                   On September 2, 2021, I caused electronic service (E-Service) of the following  
5 documents:

6 PLAINTIFF'S OPPOSITION TO SPECIALLY APPEARING AND [PROPOSED]  
7 INTERVENOR GREAT AMERICAN INSURANCE COMPANY'S MOTION TO VACATE  
7 AND SET ASIDE DEFAULT AND DEFAULT JUDGMENT

8 [PROPOSED] ORDER GRANTING IN PART AND DENYING IN PART SPECIALLY  
9 APPEARING AND [PROPOSED] INTERVENOR GREAT AMERICAN INSURANCE  
9 COMPANY'S MOTION TO VACATE AND SET ASIDE DEFAULT AND DEFAULT  
JUDGMENT

10 on the interested parties in this action by causing File & ServeXpress E-service program to  
11 transmit a true copy thereof to the following party(ies):

12 SEE ATTACHED LIST.

14                   The above document was transmitted by File & ServeXpress E-Service and the  
transmission was reported as complete and without error.

15                   Executed on September 2, 2021, at Novato, California.

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

19                   \_\_\_\_\_  
Shawna Mahoney  
20

22 Ysidro Limon, Sr.,v. Amcord Inc., et al.  
San Francisco Superior Court Case No. CGC-15-276378  
23

## **Brayton-Purcell Service List**

Date Created: 09/02/2021 02:30 PM

Matter Numbers: 120127.001-Ysidro Limon, Sr.

Run by: Shawna Mahoney

**Berkes Crane Robinson & Seal, LLP**

515 S. Figueroa Street, # 1500

Los Angeles, CA 90071

213-955-1150 213-955-1155 (fax)

**Defendants**

Great American Insurance Company, in its Capacity as Liability Insurer for C.F.  
Bolster Company (GRECFB)

**Spanos Przetak**

475 14th Street, Suite 550

Oakland, CA 94612

510-250-0200 510-380-6354 (fax)

**Defendants**