

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Fernando Gastelum v. Pinnacle Solana LP

Gastelum · No. 25-cv-3052-AJB-DDL · Decided January 20, 2026

SUMMARY

The United States District Court for the Southern District of California denied without prejudice Pinnacle Solana LP’s motion to dismiss. The court held that the motion was precluded because Pinnacle filed it after the Clerk entered default, and explained that Pinnacle’s available recourse was to seek to set aside the entry of default under Federal Rule of Civil Procedure 55(c).

CASE DETAILS

COURT	United States District Court for the Southern District of California
JURISDICTION	United States District Court for the Southern District of California
DECIDED	January 20, 2026
DOCKET	25-cv-3052-AJB-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss after the Clerk entered default against it. The court considered whether the motion could be filed while the entry of default remained in effect.
STANDARD OF REVIEW	The court applied the procedural requirements governing entry of default and the effect of an entry of default on a defendant's participation in the action.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- default
- motions to dismiss
- civil procedure

PRACTICE AREAS

- civil procedure
- default practice

QUESTIONS PRESENTED

- Whether a defendant may file a motion to dismiss after the Clerk has entered default against it.

2. Whether the defendant's motion to dismiss should be denied without prejudice because the entry of default had not been set aside.

HOLDINGS

1. Once the Clerk has entered default, the defendant is generally precluded from participating in the action, including filing a motion to dismiss, until the entry of default is set aside.
2. A defendant seeking to defend after entry of default must move to set aside the default under Federal Rule of Civil Procedure 55(c) before participating in the action.

KEY QUOTATIONS

“Entry of default cuts off a defendant’s rights to appear in the action, file counterclaims, and present a defense.” (at 1)

“At this juncture, if Pinnacle wishes to defend against the action, its only recourse is to seek to set aside the entry of default.” (at 2)

FACTUAL BACKGROUND

Pinnacle was served with the summons and complaint on November 12, 2025, but did not file a responsive pleading by the December 3, 2025 deadline. The Clerk entered default on January 13, 2026. Pinnacle filed its motion to dismiss later that day, and after an earlier motion was struck for lack of an attorney's signature, filed the motion at issue while the default remained in place.

PROCEDURAL HISTORY

Plaintiff served Pinnacle on November 12, 2025. Pinnacle did not answer or otherwise respond within the time required by Federal Rule of Civil Procedure 12(a)(1)(A)(i), and Plaintiff requested entry of default on January 12, 2026. The Clerk entered default on January 13, 2026, after which Pinnacle filed a motion to dismiss. The court previously struck an improperly signed motion and denied the renewed motion without prejudice because it was filed after entry of default.

DISPOSITION

other

CASES CITED

- Wahoo Int’l, Inc. v. Phix Doctor, Inc., No. 13-cv-1395-GPC-BLM, 2014 WL 5465373, at *2 n.1 (S.D. Cal. Oct. 28, 2014)
- Clifton v. Tomb, 21 F.2d 893, 897 (4th Cir. 1927)
- Transamerica Life Ins. Co. v. Shubin, No. 11-cv-01958-LJO-SKO, 2012 WL 5364645, at *2 (E.D. Cal. Oct. 31, 2012)
- Joe Hand Prods., Inc. v. Estrada, No. 10-cv-02165-OWW-SKO, 2011 WL 1232606, at *1 n.1 (E.D. Cal. Mar. 31, 2011), adopted, 2011 WL 1557876 (E.D. Cal. Apr. 25, 2011)

- Jellybean Entm't, Inc. v. Usnile LLC, No. 13-cv-144-IEG-WMC, 2013 WL 3283845, at *3 (S.D. Cal. June 26, 2013)
- Oliver v. All-Pro Bail Bonds, Inc., No. 17-cv-1294-AJB-NLS, 2017 WL 11421541, at *1 (S.D. Cal. Aug. 16, 2017)
- United States v. Mesle, 615 F.3d 1085 (9th Cir. 2010)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 FERNANDO GASTELUM, Case No.: 25-cv-3052-AJB-DDL 12 ORDER
DENYING MOTION TO Plaintiff, DISMISS 13 v. 14 (Doc. No. 10) PINNACLE SOLANA LP,
15 16 Defendant. 17 18 Presently before the Court is Defendant Pinnacle Solana LP's ("Pinnacle")
motion 19 to dismiss the complaint. (Doc.

No. 10.) Having reviewed the docket in this case, the Court 20 finds the matter suitable for
decision without oral argument pursuant to Local Civil Rule 21 7.1.d.1. The Court DENIES
WITHOUT PREJUDICE Pinnacle's motion. 22 Plaintiff served Pinnacle on November 12, 2025.
(Doc. No. 3.) Pursuant to Federal 23 Rule of Civil Procedure 12(a)(1)(A)(i), Pinnacle was required
to file a responsive pleading 24 "within 21 days after being served with the summons and
complaint[.]" In this case, that 25 required Pinnacle to file their motion to dismiss on or before
December 3, 2025.

Because 26 Pinnacle did not file an answer or otherwise respond by that date, Plaintiff filed a
request 27 for entry of default against Pinnacle on January 12, 2026. (Doc. No. 4.) The Clerk of
Court 28 entered default the following day, on January 13, 2026. (Doc. No. 6.) 1 Also on January
13, 2026, Pinnacle obtained from the Undersigned's staff a hearing 2 date for a motion to dismiss
and filed said motion after the Clerk entered default.

(Doc. No. 3 18.) Pinnacle filed a motion to dismiss later that day. (Doc. No. 8.) On January 15,
2026, 4 the Court struck the motion because an attorney of record did not sign the motion to 5
dismiss. (See Doc. Nos. 8–9.) Later that same day, Pinnacle filed the instant motion to 6 dismiss.
(Doc. No. 10.) 7 "When a party against whom a judgment for affirmative relief is sought has failed
8 to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk 9 must
enter the party's default." Fed.

R. Civ. P. 55(a) (emphasis added). "Entry of default 10 cuts off a defendant's rights to appear in
the action, file counterclaims, and present a 11 defense." Wahoo Int'l, Inc. v. Phix Doctor, Inc.,
No. 13-cv-1395-GPC-BLM, 2014 WL 12 5465373, at *2 n.1 (S.D. Cal. Oct. 28, 2014) (citing
Clifton v. Tomb, 21 F.2d 893, 897 (4th 13 Cir. 1927)). "A defendant's remedy if a defendant wants
to set aside default... is for the 14 defendant to file a motion to set aside entry of default pursuant
to Rule 55(c) of the Federal 15 Rules of Civil Procedure." Transamerica Life Ins.

Co. v. Shubin, No. 11-cv-01958-LJO- 16 SKO, 2012 WL 5364645, at *2 (E.D. Cal. Oct. 31, 2012) (citation omitted). “[A] party in 17 default is generally precluded from participating in the case until the entry of default has 18 been set aside.” Joe Hand Prods., Inc. v. Estrada, No. 10-cv-02165-OWW-SKO, 2011 WL 19 1232606, at *1 n.1 (E.D. Cal. Mar. 31, 2011), adopted, 2011 WL 1557876 (E.D.

Cal. 20 Apr. 25, 2011). 21 Here, the Clerk of Court entered default before Pinnacle filed its motion to dismiss. 22 (Doc. Nos. 6; 10.) As such, Pinnacle’s filing is precluded. Jellybean Entm’t, Inc. v. Usnile 23 LLC, No. 13-cv-144-IEG-WMC, 2013 WL 3283845, at *3 (S.D. Cal. June 26, 2013) 24 (finding motion for extension of time filed after default to be “precluded”); Oliver v. All- 25 Pro Bail Bonds, Inc., No. 17-cv-1294-AJB-NLS, 2017 WL 11421541, at *1 (S.D.

Cal. 26 Aug. 16, 2017) (precluding Defendants’ motion to dismiss and request for an extension of 27 time because both were filed after the Clerk of Court entered default). At this juncture, if 28 Pinnacle wishes to defend against the action, its only recourse is to seek to set aside the 1 || entry of default. See Fed. R. Civ. P. 55(c); see also United States v. Mesle, 615 F.3d 1085, 2 (9th Cir.

2010) (setting forth the three factors district courts must consider when 3 || assessing whether to set aside entry of default pursuant to Rule 55(c)). For this reason, the 4 ||Court DENIES WITHOUT PREJUDICE Pinnacle’s motion to dismiss. (Doc. No. 10.) 5 IT IS SO ORDERED. 6 Dated: January 20, 2026 □ 8 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28