

**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

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