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1. AMERICREDIT FINANCIAL SERVICES, INC. v. RAYDEN CHARNOCK ET. AL. 22CV1513

On October 18, 2022, Plaintiff filed a Complaint for Possession of Personal Property; Breach of Contract and Damages; Common Counts and an Application for Writ of Possession related to the purchase 2019 Chevrolet Silverado 1500. Plaintiff declares the following in support of the application: Plaintiff and Defendants entered into a conditional purchase agreement for the purchase and financing of the motor vehicle; Defendants pledged as security the motor vehicle; Defendants are in possession of the motor vehicle and, despite their default on the agreement, have refused to surrender it. According to Plaintiff, the purchase agreement was entered into on February 7, 2020, and Defendants defaulted under the agreement as of March 23, 2020. Plaintiff argues that Defendants likely have no equity in the vehicle and Plaintiff should not be required to post an undertaking. At most, there may be an interest of $1,047.33, assuming the vehicle is in good condition. If anything, Plaintiff argues, Defendants should have to post an undertaking of at least $27,477.67, which is the amount of the balance owing on the contract. Plaintiff is of the belief that the vehicle is located at Defendants' address in Placerville.

Plaintiff is required to serve upon Defendants copies of the summons and complaint, a notice of the application and hearing date, and a copy of the application for writ of possession and the affidavits in support of the application. Cal. Civ. Pro. § 512.030. There is no Proof of Service in the court's file indicating that Defendants were properly served with the foregoing and there is no opposition to the application.

The matter came before the court on December 16, 2022 and was continued to the present hearing date due to lack of proper service. It appears from the file that Defendants still have not been served. The matter is dropped from calendar due to lack of proper service.

TENTATIVE RULING #1: THE MATTER IS DROPPED FROM CALENDAR DUE TO LACK OF PROPER SERVICE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT

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2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. ARTHUR MURRAY v. TRAVIS CLAMPITT 22UD0384

On December 16, 2022, Defendants demurred to Plaintiff's unlawful detainer complaint. While there is no proof of service indicating service of the demurrer on Plaintiff, on January 30, 2023 Plaintiff filed a Memorandum of Points and Authorities in Opposition to Defendants' Demurrer, served by overnight mail on Defendants on January 29, 2023.

On January 31, 2023, Defendants filed an amended demurrer, which was in substance identical to the first demurrer with the only difference being that the amended demurrer was signed by both co-defendants, who are a married couple. One of the co-defendants, Joanne Wehe did not sign the original demurrer, and as such Plaintiff took her default on January 12, 2023.

On February 2, 2023, the court set aside the default finding Ms. Wehe's failure to sign the initial demurrer to be "excusable neglect" within the meaning of Code of Civil Procedure (CCP) § 473(b). The court found that the amended demurrer cured the technical defect and confirmed that it would rule on the co-defendant's amended demurrer at the February 10, 2023 hearing.

Defendants demur on the basis that the notice to quit overstates the rental amount due and therefore is defective on its face. Given the court's strict adherence to the formalities of a notice to quit in unlawful detainer proceedings, Defendants argue that the complaint cannot be amended to state a cause of action and the demurrer should be sustained without leave to amend.

Plaintiff asserts that the demurrer should be stricken as it was not timely served 16 court days prior to the hearing under CCP § 1005. The court notes the strong public policy of adjudicating matters on their merits; under other circumstances, the court might be inclined to continue the matter to allow Plaintiff adequate time to respondent. However, given the summary nature of unlawful detainer proceedings and the fact that Plaintiff has provided a substantive response to demurrer, the court finds good cause to address the demurrer on its merits.

The notice to quit states, in pertinent part, the following:

1. You are late in payment of rents exceeding **$9,600**.

   The residential rent was due beginning on June 1, 2021 at $800 per month.

   Unpaid rents from January 01, 2022 through December 01, 2022 total $9,600.

2. The above "reasonably estimated amount pursuant to California CCP § 1161.1(a) *et seq.*

CCP § 1161.1 is a code section related to unlawful detainers for commercial real property, not residential tenancies as in this case. However, this statement does not provide any direction or make any explicit request of Defendants. So, while the reference to this code section is inapplicable to this case, it does not invalidate the notice or impact the notice as to the exact amounts due.

Rather, the court finds that the notice to quit on its face gives Defendants notice of the exact unpaid rents (i.e., $9,600), which is the total rent alleged due within the past year, consistent with the limitation that the notice can only seek rent up to one year before service. The fact that the notice to quit alleges that Defendants are late in payment of rents exceeding $9,600 going back to as early as June 1, 2021 does not invalidate the notice by itself. The notice gives clear notice of the amount to be paid to Plaintiff to avoid the commencement of legal proceedings.

The demurrer is overruled. Defendants are granted leave to file an answer within 5 days as required by law.

TENTATIVE RULING #2: THE DEMURRER IS OVERRULED. DEFENDANTS ARE GRANTED LEAVE TO FILE AN ANSWER WITHIN 5 DAYS AS REQUIRED BY LAW.

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3. DANIEL DEWATER v. HOSOPO CORP et. al. PC20190143

Plaintiff filed an action against Defendant Wilson (hereinafter "Defendant") and others for battery and negligent hiring, supervision, or retention. Defendant moved for a protective order to stay all discovery and stay the setting of a trial date pending the final disposition of the felony criminal charges being prosecuted against him as a result of the same incident. The court granted the motion in part and ordered discovery propounded on Defendant to be stayed until a jury verdict had been reached on the related criminal matter.

On April 1, 2022, the court denied a motion to lift the stay brought by Defendant Aerotek, Inc. and Plaintiff, but a review hearing was set for November 4, 2022 and the parties were ordered to submit briefs updating the court on the status of the criminal matter. The matter was continued at the November 4th hearing. It was continued two more times thereafter.

The parties are ordered to appear to update the court on the status of the criminal matter and discuss lifting the stay.

TENTATIVE RULING #3: THE PARTIES ARE ORDERED TO APPEAR TO UPDATE THE COURT ON THE STATUS OF THE CRIMINAL MATTER AND DISCUSS LIFTING THE STAY. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4. LVNV FUNDING LLC. v. MAHMOUD FAZLI 22CV1123

On August 9, 2022 Plaintiff filed a complaint asserting just one cause of action for common counts related to a credit card account in Defendant's name. Plaintiff alleges that defendant owes a balance in the amount of $2,063.25; that despite demand for payment defendant has either failed, refused, or neglected to pay; and that the last payment was received on October 29, 2018. Defendant answered the complaint by Judicial Council Form (Form PLD-C-010.) The form answer does not deny the allegations of the complaint and defendant only asserts that he believes the number is incorrect, the account has been sold four times, he has little disposable income, and Plaintiff is an LLC whose personal assets are protected and he requests the same treatment.

Plaintiff moves for entry of judgment on the pleadings on the grounds that the complaint states a cause of action against defendant to collect the alleged debt, that defendant's answer does not raise a material issue of fact, nor does it state a defense to the complaint. According to the Declaration of Sarkis S. Karayan filed in support of the motion, Plaintiff has attempted to meet and confer on the matter by way of a telephone call made on December 22, 2022. As of January 5th, Defendant had not returned the call.

The moving papers were served on January 5th and filed thereafter on January 9th. Defendant has not opposed the motion.

A motion for judgment on the pleadings may be filed by plaintiff on the grounds that "…the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint…" Cal. Civ. Pro. § 438(c)(1)(A). Prior to filing such a motion, the moving party is to meet and confer either in person or telephonically in an effort to reach an agreement without the need for court intervention. Cal. Civ. Pro. § 439(a).

Similar to a demurrer, the grounds for a motion for judgment on the pleadings "…shall appear on the face of the challenged pleading or from any matter of which the court…" may take judicial notice. Cal. Civ. Pro. § 438(d). Because "[a] plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer [it] is evaluated by the same standards. [Citation]. The motion should be denied if the defendant's pleadings raise a material issue or set up an affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true. [Citation]." Allstate Ins. Co. v. Kim W., 160 Cal.App.3d 326, 330-331 (1984). However, where the defendant's pleadings show no defense to the action, then judgment on the pleadings in favor of the plaintiff is proper. *See* Knoff v. City etc. of San Francisco, 1 Cal.App.3d 184, 200 (1969).

"A motion for judgment on the pleadings should not be granted where it is possible to amend the pleadings to state a cause of action [Citation] but the burden of demonstrating such

an abuse of discretion is on the appellant. [Citations]." Atlas Assurance Co. v. McCombs Corp., 146 Cal.App.3d 135, 149 (1983).

In the matter at hand, Defendant essentially admits the debt in his answer and only claims that he does not feel the amount is correct but gives no factual basis for that claim. Such is not a valid defense to the cause of action pled against him. Defendant has not opposed the motion nor advised the court how the deficiency of the answer could be remedied by amendment, and it appears to the court that the deficiency cannot be remedied by amendment. Under the circumstances presented, it appears appropriate to grant the motion without leave to amend and enter judgment in favor of plaintiff for the amount prayed.

TENTATIVE RULING #4: PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND. JUDGMENT IS ENTERED IN FAVOR OF PLAINTIFF FOR $2,063.25.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. MARVIN AYALA et. al. v. CALIFORNIA SUITES, INC. et. al. 22CV0495

Plaintiffs filed a class action against Defendant on behalf of similarly situated employees for alleged violations of statutes concerning various alleged violations of the labor code. Having settled the matter, Plaintiff moved for preliminary approval of the settlement which was granted on August 5, 2022. The final approval hearing was set to be held on February 10, 2023 at 8:30 A.M. in Department 9.

TENTATIVE RULING #5: THE PARTIES ARE ORDERED TO APPEAR FOR FINAL APPROVAL HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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6. NAME CHANGE OF DEBRA YOUNG 22CV1731

Petitioner filed a Petition for Change of Name on December 2, 2022. The Proof of Publication was filed on February 6, 2023. Upon review of the file, the court has yet to receive the background check for Petitioner, which is required under the law. The matter is continued to March 17, 2023 at 8:30 a.m. in Department 9.

TENTATIVE RULING #6: THE HEARING ON THIS MATTER IS CONTINUED TO MARCH 17, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. PEOPLE v. RODRIGUEZ **PCL20190512**

The People filed a petition for forfeiture of certain funds seized pursuant to the provisions of Health and Safety Code §§ 11469, et. seq. Respondent has filed a response to the petition denying its allegations. This matter has previously come before the court numerous times but due to the ongoing criminal trial, it has been continued each time.

The Health and Safety Code concedes, "[i]f there is an underlying or related criminal action, and a criminal conviction is required before a judgment of forfeiture may be entered, the issue of forfeiture shall be tried in conjunction therewith." Health and Safety Code § 11488.4(i)(5).

The parties are ordered to appear to discuss the status of the criminal matter.

TENTATIVE RULING #7: THE PARTIES ARE ORDERED TO APPEAR TO DISCUSS THE STATUS OF THE CRIMINAL MATTER. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. ROLANDO SANCHEZ V. GENERAL MOTORS, LLC. 22CV0884

TENTATIVE RULING #8: MATTER IS CONTINUED TO MARCH 24, 2023 AT 8:30 A.M. IN DEPARTMENT 9.

9. TECHNOLOGY INSURANCE COMPANY v. TOMOTHY CHRISTNER 22CV0654

Defendant moves for an order setting aside the default judgment entered on August 29, 2022. The moving papers were served on January 5th and filed with the court the next day. Plaintiff filed its opposition papers on January 26th.

This matter stems from a car accident that occurred on December 4, 2019. Defendant was served on July 6, 2022, but mistakenly believed the document was in relation to unrelated unpaid debt. As such, he did not notify his insurance company. The default judgment was entered August 29th and mailed to Defendant on September 15th. According to Defendant, once he was served with the judgment he promptly notified his insurance company and the present motion was filed as soon thereafter as possible.

Plaintiff maintains that Defendant's failure to notify his insurance company when he was served was inconsequential because Plaintiff emailed a conformed copy of the complaint directly to Mercury Insurance on June 17, 2022. Additionally, Plaintiff enumerates a multitude of times that it informed Mercury of its intent to file suit. Plaintiff points to the fact that Defendant bases his argument on Civil Procedure Section 473(b) which only allows for relief upon the mistake, inadvertence, surprise, or excusable neglect of the attorney, not the client.

Section 437(b) is essentially made up of two provisions for relief. The mandatory relief provision providing for relief from default and default judgment based on *attorney* mistake, inadvertence, surprise, or neglect; and the discretionary relief provision which authorizes relief due to either the attorney's, *or the party's* mistake, inadvertence, surprise, or excusable neglect. *See* Cal. Civ. Pro. § 437(b); *See also* Jackson v. Kaiser Foundation Hospitals, Inc., 32 Cal. App. 5th 166, 173-174 (2019). While the party seeking relief from a default judgment has the burden of proof, "…the law strongly favors trial and disposition on the merits, [therefore] any doubts in applying section 473 must be resolved in favor of the party seeking relief from default. [Citations]." Shapell Socal Rental Properties, LLC v. Chico's FAS, Inc., 85 Cal. App. 5th 198, 212 (2022).

While Counsel's argument that the default was taken as a result of Counsel's surprise, it appears that the default was actually taken as a result of Defendant's mistake and resulting failure to notify his insurance carrier of his being served. Plaintiff argues that the insurance company was emailed a conformed copy of the summons and complaint on June 17, 2022, before Defendant was served on July 6th. Plaintiff's argument that the insurer had plenty of notice of the pending lawsuit is well taken in light of the surprise argument made by Defense Counsel. However, even if the insurance company had notice of the filing, they did not have any indication that the suit had been served on their insured, which it had not been at the time of the email, and as such they were not required to file an answer at that time. *See* Pelegrinelli v. McClous River Lumber Co., 1 Cal. App. 593 (1905) (excusable neglect found where the insurance company was not notified of service and therefore did not file an answer on behalf of

its insured). Defendant has a right to proper service, and an email to his insurance company is not service. It was not until proper service was effectuated that Defendant was required to file an answer.

Given that the insurance company was not made aware of service of the complaint, the question becomes whether Defendant's failure to notify his insurance company constitutes mistake, inadvertence, or excusable neglect within the meaning of Section 437(b). The court finds that it does. When Defendant was served he mistakenly believed the documents were in relation to an unrelated medical billing matter. Similarly, in *Bernards v. Grey et. al.*, 97 Cal. App. 2d 679 (1950), Defendant was served with the summons and complaint but mistakenly believed they were related to a sale of assets that had been previously approved by the court. The defendant in *Bernards* did not understand the nature of the documents served on him and put them in his briefcase without looking into the matter further. It was not until after his default was taken that the defendant reviewed the paperwork and sent it to his attorney. The court in *Bernards* found that there was excusable neglect on the part of the defendant which warranted setting aside the default. Likewise, here Defendant believed the documents to be unrelated to the present matter and he did not understand the nature of the documents served on him. Thus, his failure to notify his insurance carrier constituted excusable neglect and setting aside the default judgment is warranted.

Defendant's Motion to Set Aside Default Judgment is granted. Defendant is ordered to file and serve its Answer to Subrogation Complaint of Technology Insurance Company, Inc. on Behalf of Defendant Timothy Rex Christner no later than February 24, 2023.

TENTATIVE RULING #9: DEFENDANT'S MOTION TO SET ASIDE DEFAULT JUDGMENT IS GRANTED. DEFENDANT IS ORDERED TO FILE AND SERVE ITS ANSWER TO SUBROGATION COMPLAINT OF TECHNOLOGY INSURANCE COMPANY, INC. ON BEHALF OF DEFENDANT TIMOTHY REX CHRISTNER NO LATER THAN FEBRUARY 24, 2023.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; *SEE ALSO* LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999). NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; El Dorado County Local Rule 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING. LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR

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