SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 03/18/2025

INSTRUCTIONS FOR CONTESTING TENTATIVE RULING IN DEPARTMENT 34

The tentative ruling will become the ruling of the Court unless by 4:00PM of the Court day preceding the hearing, notice is given of an intent to argue the matter. Counsel or self-represented parties must email Department 34 (Dept34@contracosta.courts.ca.gov) to request argument and must specify, in detail, what provision(s) of the tentative ruling they intend to argue and why. Counsel or self-represented parties requesting argument must advise all other counsel and self-represented parties by no later than 4:00PM of their decision to argue, and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (Pursuant to Local Rule 3.43(2).)

ALL APPEARANCES TO ARGUE WILL BE IN PERSON OR BY ZOOM, PROVIDED THAT PROPER NOTIFICATION IS RECEIVED BY THE DEPARTMENT AS PER ABOVE.
Zoom link-

https://contracosta-courts-ca.zoomgov.com/j/1611085023?pwd=SUxPTEFLVzRFYXZycWdTWlJCdlhIdz09

Meeting ID: 161 108 5023

Passcode: 869677

Courtroom Clerk's Session

1. 10:00 AM CASE NUMBER: L24-06319
CASE NAME: MIDLAND CREDIT MANAGEMENT INC. VS. ASHLEY STANLEY
SETTLEMENT CONFERENCE MENTOR/ORDERED
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR.

2. 11:00 AM CASE NUMBER: L24-00359
CASE NAME: BEST VS. FRAZER
SETTLEMENT CONFERENCE
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR.

Law & Motion

3. 9:00 AM CASE NUMBER: L24-04180
CASE NAME: WELLS FARGO BANK, N.A. VS. ADAM PUHGER
***HEARING ON MOTION FOR DISCOVERY**
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for an Order Deeming the Truth of The Matters Specified in Plaintiff's Request for Admission as Admitted on November 4, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on March 18, 2025.

Background

Plaintiff served defendant Adam T. Puhger ("Defendant") with a Request for Admissions (Set One). See Declaration of David Bartley filed November 4, 2024 ("Supporting Declaration"), ¶¶2-3 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on August 13, 2024 by mail.* *Id*. at ¶3 and **Exhibit 1** [attached Proof of Service dated August 13, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before September 17, 2024 (30 days from and after August 13, 2024 is September 12, 2024 and five calendar thereafter falls on September 17, 2024). See *id*. at ¶4. No responses were received by the deadline. See *id*. at ¶4. Despite meet and confer efforts, no responses were received. See *id*. at ¶5.

*The RFAs were served on Defendant's attorney of record at that time, Julia Young of Guardian Litigation Group, LLP. Subsequently, on August 26, 2026, a Substitution of Attorney was filed on behalf of Defendant, substituting Jonathan Yong as attorney of record, also with the Guardian Litigation Group, LLP.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant to the Motion to Deem Admissions have been filed with the Court.

Sanctions

No monetary sanctions were sought by the moving party.

Disposition

Accordingly, the Court orders as follows:

1. Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 7 are DEEMED ADMITTED by Defendant.
3. The genuineness of the document attached as Exhibit 1 to the RFAs, pursuant to RFA No. 8, is DEEMED ADMITTED by Defendant.
4. Moving party to prepare the order after hearing.

4. 9:00 AM CASE NUMBER: L22-02856
CASE NAME: JEFFERSON CAPITAL SYSTEMS, LLC VS. SANDRA MENJIVAR
***HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT (CCP 664.6) FILED BY PLN ON 11/7/24**
FILED BY: JEFFERSON CAPITAL SYSTEMS, LLC
****TENTATIVE RULING:****

Plaintiff Jefferson Capital Systems, LLC ("Plaintiff") filed a Motion to Enforce Settlement pursuant to Code of Civil Procedure section 664.6 on November 7, 2024 (the "Motion to Enforce Settlement"). The Motion to Enforce Settlement was set for hearing on January 21, 2025. The motion was later continued by the Court to March 18, 2025.

Background

The parties resolved the pending claims by entering into a written settlement agreement. See Declaration of Flint C. Zide filed November 7, 2024 ("Supporting Decl."), ¶3 and **Exhibit 1** thereto (the "Settlement Agreement"). Certain payment(s) were required to be made by

the defendant Sandra Menjivar ("Defendant") under an express payment plan (the "Payment Plan"). Settlement Agreement, ¶4; see also Supporting Decl., ¶4. The Settlement Agreement included a stipulation for entry of judgment in the event of a default under the Payment Plan. Settlement Agreement, ¶¶1-3 and 7.

Defendant failed to make the agreed upon payment(s) and is in default under the terms of the Settlement Agreement. Supporting Decl., ¶6. The Defendant owes the principal amount of $5,026.23. *Id*. at ¶7. Plaintiff incurred costs in the amount of $585.00. *Id*. at ¶7.

Notice of the Motion to Enforce Settlement was given to Defendant. Proof of Service filed November 7, 2024. Defendant was given notice of the new hearing date, March 18, 2025, as part of the Plaintiff's "NOTICE OF SUBMISSION OF PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT" served on November 4, 2025 and filed December 26, 2024. See Proof of Service filed December 26, 2024. No prior notice of default and/or opportunity to cure is required under the terms of the Settlement Agreement. See Settlement Agreement, ¶7; see also Supporting Decl., ¶8.

Analysis

No opposition was filed by Defendant.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings:

1. Defendant is in default of the Settlement Agreement.
2. Defendant owes the principal amount of $5,026.23 under terms of the Settlement Agreement.
3. Plaintiff incurred costs in the amount of $585.00.

Disposition

Accordingly, the Court finds and orders as follows:

1. The Motion to Enforce Settlement is GRANTED.
2. Plaintiff shall have judgment against Defendant in the principal amount of $5,026.23, with costs in the amount of $585.00.
3. A proposed form of Judgment was lodged with the moving papers which the Court shall execute and enter.

5. 9:00 AM CASE NUMBER: L24-05455
CASE NAME: CAPITAL ONE, N.A. VS. JAMES HEBERT
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQ FOR ADMISSIONS OF TRUTH OF FACTS BE DEEMED ADMITTED FILED BY PLN ON 11/5/24**
FILED BY: HEBERT, JAMES J
****TENTATIVE RULING:****

Plaintiff Capital One, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 5, 2024 (the "Motion to

Deem Admissions"). The Motion to Deem Admissions was set for hearing on January 21, 2025. The Motion to Deem Admissions was subsequently continued for hearing on March 18, 2025. An amended notice of motion was filed on December 23, 2024.

Background

Plaintiff served defendant James J. Hebert ("Defendant") with a Requests for Admission (Set One). See Declaration of Alexander Balzer Carr filed November 5, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on July 26, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated July 26, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before September 17, 2024 (30 days from and after July 26, 2024 is August 25, 2024 and five calendar thereafter falls on August 30, 2024). No responses were received by the deadline. See *id*. at ¶3. Despite meet and confer efforts, no responses were received. See *id*. at ¶4.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant to the Motion to Deem Admissions have been filed with the Court.

Sanctions

No monetary sanctions were sought by the moving party.

Disposition

Accordingly, the Court orders as follows:

1. Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 5 are DEEMED ADMITTED by Defendant.
3. Moving party to prepare the order after hearing.

6. 9:00 AM CASE NUMBER: L24-04392
CASE NAME: CITIBANK N.A. VS. GUSTAVO CASTILLO, JR.
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQ FOR ADMISSIONS OF TRUTH OF FACTS BE DEEMED ADMITTED FILED BY PLN ON 11/5/24**
FILED BY: CITIBANK N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 5, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on January 21, 2025. An amended notice of motion was filed December 23, 2024. The Motion to Deem Admissions was subsequently continued to March 18, 2025.

Disposition

The Court orders as follows:

1. A "Stipulation Agreement" was filed by the parties on February 11, 2025 (the "Stipulated Resolution"). However, it does not appear that the Court has, as yet, approved and entered the requested order(s) under the Stipulated Resolution.
2. In light of the Stipulated Resolution, the Motion to Deem Admissions is CONTINUED. The clerk of the Court shall give notice of the continued hearing date.
3. The Court anticipates vacating the continued hearing date if and when the requested order(s) under the Stipulated Resolution are entered.

7. 9:00 AM CASE NUMBER: MSL18-06708
CASE NAME: KELSTIN GROUP VS COLLIER
***HEARING ON MOTION IN RE: NOTICE OF MOTION TO AMEND JUDGMENT**
FILED BY: KELSTIN GROUP, INC. DBA PACIFIC CREDIT SERVICES
TENTATIVE RULING:

Plaintiff Kelstin Group, Inc. ("Plaintiff") filed a Motion to Amend Judgment on November 5, 2024 (the "Motion to Amend Judgment"). The Motion to Amend Judgment was set for hearing on January 14, 2025. The motion was later continued by the Court to March 18, 2025.

Background

Plaintiff's motion seeks to amend the Judgment entered September 30, 2019 to correct the name of the defendant on the grounds that the original Judgment contained an error. The September 30, 2019 Judgment was entered as against defendant Candace C. Collier. See Declaration of Lyle D. Solomon filed November 5, 2024 ("Supporting Decl."), ¶2 and **Exhibit 1** thereto. Plaintiff has been "unable to enforce the judgment due to the judgment debtor's name." *Id*. at ¶3. Plaintiff seeks to amended the Judgment to state defendant's name as "Candace C. Collier aka Candace C. Wade." *Id*.

Analysis

Plaintiff contends that the Judgment may amended pursuant to Code of Civil Procedure sections 187 and 473(d) as a "scrivener's error" because the defendant's name was "listed incorrectly when submitted." See Motion to Amend Judgment, p. 1. ln. 28 – p. 2, ln. 5.

First, this was not a "scrivener's error" due to a mistake. The operative Judgment was entered by default. See Judgment, ¶1. The defendant was named in the original Complaint as "**Candace C. Collier.**" See Complaint filed November 15, 2018, ¶1. Likewise, the same name was pled in the Amended Complaint. See Amended Complaint filed January 28, 2019, ¶1. Neither complaint contains any alias allegations regarding the defendant. Default was entered against the defendant under the name as pled, "**Candace C. Collier."** See Request for Entry of Default filed June 17, 2019. The supporting declaration submitted to obtain the underlying default Judgment did not reference any "alias" of "Candace C. Wade," but rather referred to "**Candace C. Collier**" throughout. See Declaration of Justin R. Cullum filed July 24, 2019, ¶1 *et seq*. The Judgment was duly entered in accordance with the operative pleadings and as **correctly** requested at the time in light of those pleadings.

Second, even if there may be other grounds to amend the Judgment to state the defendant's true name or an alias, Plaintiff has failed to provide sufficient evidence to do so. **The supporting declaration contains no information to support any finding that the named defendant, Candace C. Collier, has an "alias" of Candace C. Wade" or that such name is her true legal name at this time.** *Id*. at ¶¶1-4. Nor does the declaration contain any information about when or how this was learned. *Id*.

Plaintiff is admonished that if a subsequent request is made, it should be made on the proper grounds, supported by good faith evidence.

Disposition

The Court finds and orders as follows:

1. The Motion to Amend Judgment is DENIED.

8. 9:00 AM CASE NUMBER: L24-01194
CASE NAME: JPMORGAN CHASE BANK N.A. VS. JASON LEE, SR.
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL AND ENTER JUDGMENT UNDER**

STIPULATION FILED BY PLN ON 8/26/24
FILED BY: JPMORGAN CHASE BANK N.A.
TENTATIVE RULING:

DISCLOSURE: The presiding judicial officer, the Hon. Leonard E. Marquez makes the following disclosure. A judge is disqualified where the judge owns a legal or equitable interest in a party of a fair market value in excess of $1,500, which includes publicly traded stocks. Judge Marquez previously held stocks in certain publicly traded entities, including JPMORGAN CHASE & CO (JPM). However, Judge Marquez has divested from direct ownership of such stocks and does not believe that this is a basis for disqualification in this case.

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on August 26, 2024. The motion was set for hearing on January 17, 2025. An amended motion was filed on December 4, 2024 (the "Amended Motion to Enter Stipulated Judgment after Default"). Subsequently, the matter was continued to March 18, 2025. **However, no notice to the parties of the March 18, 2025 hearing date appears of record on the Court's docket.**

Background

The parties entered into that certain settlement agreement in or about April 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor Jason J Lee, Sr ("Defendant") in the amount of $22,544.91, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Amended Supporting Declaration of Plaintiff's Counsel filed December 4, 2024 ("Supporting Declaration"), ¶¶2-3.

The amended motion papers included a request for judicial notice attaching a copy of the "Stipulation Agreement." The request is GRANTED and the Court takes judicial notice of the as-filed "Stipulation Agreement" filed May 2, 2024.

Settlement Agreement stipulated to the principal amount due and owing, $22,544.91. Settlement Agreement, ¶1. As part of that Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. *Id*. at ¶¶2-3.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. After credit for amounts paid, there remains $19,394.00 due and owing. *Id*. at ¶¶6-7. No costs are claimed by Plaintiffs. *Id*.

Analysis

The motion is unopposed at this time.

Disposition

The Court finds and orders as follows:

1. The Court is inclined to GRANT the Amended Motion to Enter Stipulated Judgment

after Default and enter Judgment in favor of Plaintiff and against Defendant in the principal amount of $19,394.00.

2. However, out of an abundance of caution, the Court hereby continues the matter to **March 25, 2018, 9:00 p.m. in Department 34** of the Court to ensure that notice of the hearing has properly been given to the Defendant. The clerk of the Court is directed to give notice to Defendant and all other parties of the new hearing date.

9. 9:00 AM CASE NUMBER: L24-05951
CASE NAME: CITIBANK N.A. VS. LILIANA SANTANA
***HEARING ON MOTION IN RE: MOTION FOR JUDGMENT ON THE PLEADING FILED BY PLN ON 8/26/24**
FILED BY: CITIBANK N.A.
TENTATIVE RULING:

Plaintiff CITIBANK, N.A. ("Plaintiff") filed a Motion for Judgment on the Pleadings on August 26, 2024 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on January 17, 2025. Subsequently, the matter was continued to March 18, 2025. Notice was given to the parties of the continued hearing date.

Background

The Motion for Judgment on the Pleadings is based on the contention that operative complaint states facts sufficient to constitute a cause of action and the answer does not state facts sufficient to constitute a defense. Plaintiffs contends that defendant Liliana Santana (the "Defendant") admits all statements in the complaint are true and that Defendant owes the alleged debt.

Analysis

A motion for judgment on the pleadings may be brought by a plaintiff where 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. Code Civ. Proc. § 438(c); see Weil & Brown, *et al*., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024) ("Rutter Civ. Pro.") § 7:290. The grounds for a motion for judgment on the pleadings must appear on the face of the pleadings or be based on facts that a court may judicially notice. Civ. Proc. § 438(d); Rutter Civ. Pro., § 7:291.

Plaintiff's Complaint alleges causes of action for Common Counts (Open Book Account, Money Lent and Money Paid at Defendant's Special Instance and Request) based on the allegation that Defendant became indebted in the amount of $2,925.63 on a "Shop Your Way Mastercard" credit card account. See Complaint filed July 16, 2024, p. 2, ¶9 and Attachment (First Cause of Action), p. 1, ¶¶ CC-1 through CC-2. It is alleged that the Plaintiff is the successor-in-interest to the original creditor on this debt. *Id*. at p. 2, ¶9.

Defendant's Answer was filed July 8, 2024. The Answer does not deny any of the allegations of the Complaint. See Answer filed July 31, 2024. Box 3.a. of the Answer form (general denial) is not checked. *Id*. Box 3.b. of the Answer form (admission with specific denials) is checked. *Id*. However, no exceptions are stated contending any particular allegations of the Complaint are untrue. Rather, Defendant affirmatively acknowledged liability for the debt, writing the following at Paragraph 6:

> Payment plan to pay the debt.

Answer, p. 2, ¶6.

No other denials or affirmative defenses are set forth in the Answer. Box 4 regarding any affirmative defenses is blank. Answer, p. 2, ¶6.

Even liberally construing the pleading filed by a self-represented litigant, it is evident that Defendant admits the fact of the debt and does not state any cognizable defense to the liability. While the expressed desire to want to work about a payment arrangement is a laudable one, that does not change the plain conclusion that the Answer does not state facts sufficient to constitute a defense to the Complaint.

The Motion for Judgment on the Pleadings was unopposed.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings:

1. Plaintiff's Complaint states facts sufficient to constitute a cause or causes of action against the Defendant and Defendant's Answer does not state facts sufficient to constitute a defense to the Complaint.
2. Defendant became indebted in the amount of $2,925.63 on the subject credit card account (the "Debt").
3. Plaintiff is the successor-in-interest to the original creditor on this Debt and is entitled to judgment as a matter of law against Defendant on the Complaint.

Costs

As part of the moving papers, a Memorandum of Costs was filed August 26, 2024. The Memorandum of Costs reflects recoverable costs in the sum of $358.61.

Disposition

The Court finds and orders as follows:

1. The Motion for Judgment on the Pleadings is GRANTED.
2. A proposed form of judgment was lodged with the Court and which the Court shall execute and enter.

10. 9:00 AM CASE NUMBER: L24-05955
CASE NAME: CAPITAL ONE N.A. VS. JASMINE LOWE
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQ FOR ADMISSIONS OF**

TRUTH OF FACTS BE DEEMED ADMITTED FILED BY PLN ON 11/5/24
FILED BY: CAPITAL ONE N.A.
TENTATIVE RULING:

Plaintiff Capital One, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 5, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on January 21, 2025. The Motion to Deem Admissions was subsequently continued for hearing on March 18, 2025. An amended notice of motion was filed on January 21, 2025.

Background

Plaintiff served defendant Jasmine Lowe ("Defendant") with a Requests for Admission (Set One). See Declaration of Brian Langedyk filed November 5, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on August 27, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated August 27, 2024 (the "Proof of Service")].

With a five calendar day extension for service of the RFAs by mail, the responses were due to be served on or before October 1, 2024 (30 days from and after August 27, 2024 is September 26, 2024 and five calendar thereafter falls on October 1, 2024). No responses were received by the deadline. See *id*. at ¶3.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom requests for admission are directed fails to serve a timely response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*. There is no meet and confer requirement for a motion to deem matters admitted under Section 2033.280. See *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 777.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the discovery requests at issue:

1. Defendant was duly served with the subject RFAs.
2. No timely response was made to the RFAs by Defendant.

3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the RFAs.
4. No opposition or other responsive pleadings by Defendant to the Motion to Deem Admissions have been filed with the Court.

Sanctions

No monetary sanctions were sought by the moving party.

Disposition

Accordingly, the Court orders as follows:

1. Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 5 are DEEMED ADMITTED by Defendant.
3. Moving party to prepare the order after hearing.

11. 9:00 AM CASE NUMBER: L24-01204
CASE NAME: WELLS FARGO BANK, N.A. VS. JEANCARLOS SOTO
HEARING ON SUMMARY MOTION MOTION FOR SUMMARY JUDGMENT FILED BY PLN ON 8/26/24
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion for Summary Judgment on August 26, 2024 (the "MSJ"). The MSJ was set for hearing on January 17, 2025. Thereafter, the MSJ was reset for hearing on January 21, 2025 in Department 34 of the Court and then continued to March 18, 2025. No opposition has been filed.

Background

Plaintiff contends that it is entitled to summary judgment as a matter of law because it is undisputed that defendant JEANCARLOS SOTO failed to pay $8,000.11 due and owing on a Wells Fargo credit card. See MSJ, Memorandum of Points and Authorities ("MPA"), p. 3 *et seq*.

Plaintiff's MSJ is supported by the Separate Statement of Undisputed Material Facts filed August 26, 2024 (the "Separate Statement"). The Separate Statement set forth the asserted undisputed material facts ("UMF") supporting Plaintiff's claims.

Plaintiff filed a Memorandum of Costs on August 26, 2024 reflecting a total of $725.00 in recoverable costs.

Analysis

The procedure by which a party may seek pretrial entry of judgment on the ground that there is no dispute of material fact is summary judgment or, when the request is for a dispositive ruling on one of multiple claims within an action, summary adjudication. Code Civ. Proc. § 437c; Rule 3.1350 of the California Rules of Court (CRC); see *Weiss v. People ex*

*rel. Dept. of Transport*ation (2020) 9 Cal.5th 840, 864; see generally CJER, *California Judges Benchbook: Civil Proceedings before Trial* (2022) ("CJER Civ. Proc. before Trial"), § 13.2 *et seq*. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code Civ. Proc. § 437c(f)(1).

Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. *Weiss v. People ex rel. Dept. of Transportation*, *supra*, 9 Cal.5th at 864. To ensure that the opposing party has notice of the factual issues in dispute and an opportunity to present the evidence relevant to the motion, the parties must submit separate statements of undisputed facts. *Id*. at 864; see Code Civ. Proc. § 437c(c) and CRC 3.1350(d).

The party moving or summary judgment bears the burden of persuasion that there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; see CJER Civ. Proc. before Trial, § 13.60. There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. *Id*. A plaintiff bears the burden of persuasion that each element of the cause of action in question has been proved, and hence that there is no defense thereto. *Id*. A defendant bears the burden of persuasion that one or more elements of the cause of action in question cannot be established, or that there is a complete defense thereto. *Id*.

The party moving for summary judgment bears an initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact; if the moving party carries its burden of production, the burden shifts to the opposing party who then has a burden of production to make a *prima facie* showing of the existence of a triable issue of material fact. *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at 850.

1. First Cause of Action: Breach of Contract

To establish a claim for breach of contract, a plaintiff must establish: (1) the existence of the contract, (2) plaintiffs' performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damage to Plaintiff. *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.

Plaintiff has carried its initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of a breach of contract. Plaintiff's evidence shows the existence of the contract, i.e. that Defendant entered into a credit card agreement on certain terms and conditions (the "Terms and Conditions"), including the obligation to repay the principal amount charged plus applicable interest and other charges. UMF Nos. 1-5. The evidence demonstrates that Plaintiff performed its obligations in relation to extending the credit, including the rendition of monthly statements, and that Plaintiff breach the Terms and Conditions by failing to repay the credit extended. UMF Nos. 6-13. Plaintiff suffered damages in the amount of

$8,000.11 for unpaid credit card charges. UMF Nos. 14.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact. No opposition has been filed by the Defendant.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's first cause of action for breach of contract and that Plaintiff is entitled to judgment as a matter of law.

2. Third and Fourth Causes of Action: "Money Lent" and "Money Paid"*

When a party lends or pays out money at the request of another, the law will imply a promise or obligation to repay the money stemming from the equitable principle of avoiding unjust enrichment. *Old Republic Ins. Co. v. Fsr Brokerage* (2000) 80 Cal.App.4th 666, 676. The essential elements of the common count money lent or paid are: (1) defendant is indebted to plaintiff in a certain sum; and (2) the indebtedness is for money lent, paid or expended to, or for, the defendant. *Moya v. Northrup* (1970) 10 Cal.App.3d 276, 280.

Plaintiff has carried its initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of the common counts, money lent or paid.

The evidence shows that Defendant obtained credit at Defendant's request and incurred indebtedness on the credit card account in the sum of $8,000.11 for unpaid credit card charges. UMF Nos. 15-21 and 22-27.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact. No opposition has been filed by the Defendant.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's third and fourth causes of action for "Money Lent" and "Money Paid," respectively, and that Plaintiff is entitled to judgment as a matter of law.

*Although the Separate Statement refers to the second and third causes of action, it is evident from Plaintiff's Complaint that the referenced "Money Lent" and "Money Paid" causes of action are pled as the third and fourth causes of action. See Complaint filed February 14, 2025, p. 5, ¶¶ CC-1(b)(4) and (5).

3. Fifth and Sixth Causes of Action: "Open Book Account" and "Account Stated"**

The elements of an open book account cause of action are: (1) that plaintiff and defendant had financial transactions; (2) that plaintiff kept an account of the debits and credits involved in the transactions; (3) that defendant owes plaintiff money on the account; and (4) the amount of money that defendant owes plaintiff. *State Comp. Ins. Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449.

The elements of an account stated are: (1) previous transactions between the parties establishing the relationship of debtor and creditor; (2) an agreement between the parties, express or implied, on the amount due from the debtor to the creditor; and (3) a promise by the debtor, express or implied, to pay the amount due. *Zinn v. Fred R. Bright Co.* (1969) 271 Cal.App.2d 597, 600.

Plaintiff has carried its initial burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of the common counts for an open book account and an account stated.

The evidence shows that Plaintiff maintained an account of the transactions on the credit card debt incurred by Defendant and that Defendant incurred indebtedness on that account in the sum of $8,000.11 for unpaid credit card charges. UMF Nos. 28-36. It was further shown that Defendant was rendered monthly statements on the account and no disputes were raised as to the balance due. UMF Nos. 37-44. See *Zinn v. Fred R. Bright Co.*, *supra*, 271 Cal.App.2d 597, 600 (If the debtor fails to object to the statement within a reasonable time, the law implies his agreement that the account is correct as rendered.).

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact. No opposition has been filed by the Defendant.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's fifth and sixth causes of action for open book account and account stated, respectively, and that Plaintiff is entitled to judgment as a matter of law.

**Although the Separate Statement refers to the fourth and fifth causes of action for these claims, it is evident from Plaintiff's Complaint that the referenced "Open Book Account" and "Account Stated" causes of action are pled as the fifth and sixth causes of action. See Complaint filed February 14, 2025, p. 6, ¶¶ CC-1(a)(1) and (2).

Disposition

The Court finds and orders as follows:

1. Subject to Paragraph 2 below, the Motion for Summary Judgment is GRANTED.
2. The Court notes that the second cause of action appears to be a separate breach of contract claim not expressly founded upon the written agreement. See Complaint filed February 14, 2025, p. 4. That second cause of action was not addressed in the moving party's Separate Statement. The Court is prepared to grant summary judgment, as indicated above. However, to do so, Plaintiff would have to dismiss the unadjudicated second cause of action. The Court may only grant summary judgment if it completely disposes of all causes of action and the Court may thereafter enter judgment. See Code of Civ. Proc. § 437c(c). A motion seeking adjudication of some but not all causes of action must be brought as a motion for summary adjudication. Code of Civ. Proc. § 437c(f). PARTIES TO APPEAR TO ADDRESS THIS ISSUE.

12. 9:00 AM CASE NUMBER: L23-05582
CASE NAME: JPMORGAN CHASE BANK N.A. VS. MICHEL SIEMONS
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT UNDER STIPULATED SETTLEMENT FILED BY PLN ON 11/5/24**
FILED BY: JPMORGAN CHASE BANK N.A.

TENTATIVE RULING:

DISCLOSURE: The presiding judicial officer, the Hon. Leonard E. Marquez makes the following disclosure. A judge is disqualified where the judge owns a legal or equitable interest in a party of a fair market value in excess of $1,500, which includes publicly traded stocks. Judge Marquez previously held stocks in certain publicly traded entities, including JPMORGAN CHASE & CO (JPM). However, Judge Marquez has divested from direct ownership of such stocks and does not believe that this is a basis for disqualification in this case.

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on November 5, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on January 28, 2025. Subsequently, the matter was continued to March 18, 2025. **However, no notice to the parties of the March 18, 2025 hearing date appears of record on the Court's docket.**

Background

The parties entered into that certain settlement agreement in or about April 21, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor Michel Siemons ("Defendant") in the amount of $19,364.31, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Supporting Declaration of Plaintiff's Counsel filed November 5, 2024 ("Supporting Declaration") ¶2-3.

The amended motion papers included a request for judicial notice attaching a copy of the "Stipulation Agreement." The request is GRANTED and the Court takes judicial notice of the as-filed "Stipulation Agreement" filed December 22, 2023.

Settlement Agreement stipulated to the principal amount due and owing, $19,364.31. Settlement Agreement, ¶1. As part of that Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. *Id*. at ¶¶2-3.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. After credit for amounts paid, there remains $8,111.31 due and owing. *Id*. at ¶¶6-7. No costs are claimed by Plaintiffs. *Id*.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court is inclined to GRANT the Amended Motion to Enter Stipulated Judgment after Default and enter Judgment in favor of Plaintiff and against Defendant in the principal amount of $8,111.31.

2. However, out of an abundance of caution, the Court hereby continues the matter to **March 25, 2018, 9:00 p.m. in Department 34** of the Court to ensure that notice of the hearing has properly been given to the Defendant. The clerk of the Court is directed to give notice to Defendant and all other parties of the new hearing date.

13. 9:00 AM CASE NUMBER: L24-02686
CASE NAME: DISCOVER BANK VS. AARON HOWARD
***MOTION/PETITION TO COMPEL ARBITRATION**
FILED BY: HOWARD, AARON
TENTATIVE RULING:

On July 8, 2024, defendant Aaron Howard ("Defendant") filed a Motion to Compel Arbitration and Stay Proceedings (the "Arbitration Motion"). The Arbitration Motion was set for hearing on November 1, 2024. The Court continued the Arbitration Motion to November 22, 2024. At that hearing, the Court continued the Arbitration Motion again because Defendant had not served the motion on the opposing party. See Minute Order dated November 22, 2024. The motion was reset for January 31, 2025. Thereafter, a Proof of Service was filed on December 2, 2024, reflecting service of the motion on the opposing party by mail. The January 31, 2025 hearing was continued to February 4, 2025 in connection with a reassignment of the case for all purposes to Department 34. Later, that date was continued again to March 18, 2025. No opposition has been filed.

Background

Contractual arbitration, also called private or nonjudicial arbitration, is a procedure for resolving disputes that arise from the parties' agreement. See CJER, *California Judges Benchbook: Civil Proceedings before Trial* (2022) ("CJER Civ. Proc. before Trial"), § 3.37. Arbitration involves the waiver of the right to a jury trial and generally involves limits on the scope of judicial review of an arbitration decision. *Id*.

Code of Civil Procedure section 1281 provides that an arbitration agreement must be in writing to be valid and enforceable. Code Civ. Proc. § 1281; see CJER Civ. Proc. before Trial, § 3.37. Absent certain exceptions, **arbitration must be compelled where it is shown that a written agreement to arbitrate exists, there is a controversy between the parties that is subject to that agreement, and the other party has refused to arbitrate.** Code Civ. Proc. § 1281.2; see *Ashburn v. AIG Financial Advisors, Inc.* (2015) 234 Cal.App.4th 79, 96.

A petition to compel arbitration is heard "in a summary way in the manner ... provided by law for the making and hearing of motions." Code Civ. Proc. § 1290.2; see *Ashburn v. AIG Financial Advisors, Inc.*, *supra*, 234 Cal.App.4th at 96. A party is generally not entitled to an evidentiary hearing with live witness testimony, although the Court has discretion to conduct such a hearing; for example, where there are sharply conflicting factual accounts requiring the hearing of such testimony. *Id*.

The party seeking to compel arbitration bears the burden of proving the existence of a valid

arbitration agreement by the preponderance of the evidence, and a party opposing the petition bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. *Ashburn v. AIG Financial Advisors, Inc.*, *supra*, 234 Cal.App.4th at 96, quoting *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.

The Federal Arbitration Act (9 U.S.C. § 1 *et seq*.) ("FAA") applies to agreements involving interstate commerce. See *Gamma Eta Chapter of Pi Kappa Alpha v. Helvey* (2020) 44 Cal.App.5th 1090, 1098. Where no party raises the issue of interstate commerce or applicability of the FAA, the court applies California law. *Id*.

Analysis

Defendant's motion contends that the parties' contract "contains a binding arbitration provision..." See Arbitration Motion, ¶2. While Defendant's motion paper states that a copy of the operative arbitration agreement is attached to "this motion," it is not. *Id*. at ¶3. There is no attachment to the motion. The motion is a two page document and does not appear to have any attachment, at least as filed with the Court.

Moreover, the reference to the arbitration agreement also being attached "to the complaint answer" is unavailing. See Arbitration Motion, ¶3. Even if the Court were inclined to overlook the lack of foundation for consideration of the document because it is not attached to a proper declaration submitted in evidence on the pending motion, on its face the three page writing attached to the Answer does not refer to the parties or contain any signatures. See Answer filed July 8, 2024, pp. 3-5. There is no declaration explaining how or when it was entered into between the parties or showing how this particular document related to any transaction between the parties.

Procedurally the motion is also defective in that motion is not supported by a proper declaration signed under penalty of perjury. The bald statements in the motion are not sufficient evidence of the existence of an agreement, especially in light of the failure to actually attach the agreement, as represented.

Accordingly, Defendant has not met their burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, at least based on the moving papers on the current motion.

Disposition

The Court finds and orders as follows:

1. The Arbitration Motion is DENIED, without prejudice.
2. If the Plaintiff concedes that there exists a binding arbitration covering the parties' dispute, the parties are encouraged to meet and confer regarding a stipulation to participate in arbitration.

14. 9:00 AM CASE NUMBER: MSL11-01195
CASE NAME: RIVERWALK HOLDINGS VS RUELAS
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DEFAULT JUDGMENT FILED BY DEF ON**

9/19/24
FILED BY: RUELAS, JUAN
TENTATIVE RULING:

Defendant and judgment debtor Juan Ruelas ("Mr. Ruelas") filed Motion to Set Aside Default Judgement on September 19, 2024 (the "Motion to Set Aside"). The Motion to Set Aside was set for hearing on January 22, 2025. Subsequently, the hearing date was continued to March 18, 2025. Notice was given to the parties of the continued hearing date.

Background

Plaintiff Riverwalk Holdings, Ltd ("Plaintiff") filed a Complaint on March 22, 2011. A default was entered against the named defendant Juan Ruelas on August 22, 2011. Thereafter, a default money judgment was entered on August 22, 2011 in the total amount of $6,503.45 (the "Judgment"). The Judgment was later assigned to Cavalry SPV I, LLC (the "Assignee"). See Acknowledgment of Assignment of Judgment filed October 13, 2015.

The Judgment was renewed July 26, 2021.

Analysis

The Motion to Set Aside is based on a number of separate grounds. Each of those grounds is addressed in turn below.

1. Suspended Business Entity

The Court first addresses the contention that the Judgment is void because the plaintiff in the matter was a suspended California business entity without capacity to prosecute the underlying action and obtain the subject Judgment.

The supporting declaration filed by Mr. Ruelas' counsel attaches a copy of a printout from the California Secretary of State's "online Business Search resource" purportedly regarding a business entity named "Riverwalk Holdings, LLC." See Declaration of Patrick O'Shaughnessy ("O'Shaughnessy Decl."), ¶6 and **Exhibit A** thereto. First, Exhibit A does not reference the subject business entity or any other entity for that matter. Nor does it appear to be a filed record of any sort. Second, even assuming that the record reflects the suspended status of the business entity "Riverwalk Holdings, LLC," that is not the same business entity. As Plaintiff's opposition points out, the plaintiff business entity is Riverwalk Holdings, Ltd. not "Riverwalk Holdings, LLC." The Court cannot conclude from the proffered evidence that Riverwalk Holdings, Ltd. was a suspended business entity for any particular period of time and did not have the capacity prosecute the underlying action and obtain the Judgment.

2. Extrinsic Fraud and/or Mistake

A final judgment may be set aside by a court if it has been established that extrinsic factors have prevented one party to the litigation from presenting their case. *In re Marriage of Park* (1980) 27 Cal.3d 337, 342. The grounds for such equitable relief are commonly stated as being extrinsic fraud or mistake. *Id*. Those terms are given a broad meaning and tend to

encompass almost any set of extrinsic circumstances which deprive a party of a fair adversary hearing. *Id*.; see also *Aldabe v. Aldabe* (1962) 209 Cal.App.2d 453, 474 ("Fraud or mistake is extrinsic when it deprives the unsuccessful party of an opportunity to present his case to the court.") quoting *Westphal v. Westphal* (1942) 20 Cal.2d 393, 397.

Mr. Ruelas' supporting declaration recites that the underlying debt is related to a Washington Mutual card and that Chase Bank bought Washington Mutual in approximately 2008. Declaration of Juan Ojeda Ruelas ("Ruelas Decl."), ¶9. This is consistent with the underlying pleadings in the case. See Complaint filed March 22, 2011, p. 3 (named plaintiff "RIVERWALK HOLDINGS, LTD" alleged to be the assignee of "CHASE BANK USA, N.A.").

Mr. Ruelas contends that he never had a Washington Mutual credit card and none is reflected on his credit report. Ruelas Decl., ¶9. He states that he did have a "Chase Bank ("JPMCB") credit card" but that was opened on October 12, 2017, approximately 6 years after the Judgment in this case. *Id*.

He further contends that he never lived at the address—7251 Brentwood Blvd. #T256 in Brentwood, California—at which the named defendant was served with process more than a decade ago on March 31, 2011. Ruelas Decl., ¶¶4-5. Mr. Ruelas observes that "[t]hese Case filings reference another person named Juan Ruelas, or someone claiming they were me, Juan Ojeda Ruelas. The person these filings assert to have notified is not me." *Id*. at ¶3.

The underlying proof of service filed April 15, 2011 reflects valid personal service on the named defendant Juan Ruelas by a registered process server. See Proof of Service of Summons filed April 15, 2011. This raises a presumption of valid service. See *Floveyor Internat., Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 795 (the filing of a proof of service creates a rebuttable presumption that the service was proper).

That Mr. Ruelas did not live at the 7251 Brentwood Blvd. #T256 address does not necessarily mean that he was not personally served at that location at the time. A self-serving denial of service some roughly fourteen years later does not persuade the Court that the person served was not him. Nor does the Court find that the presumption of valid service had been rebutted.

And if the person served was indeed someone else because the moving party Mr. Juan Ojeda Ruelas is not the same Mr. Juan Ruelas that owed the debt and was served, then the remedy is not a set aside of the Judgment. The issue would be an improper attempt to enforce an otherwise valid judgment against the wrong person. That entails a different remedy than what the moving party seeks here.

Accordingly, the Court finds that the evidence does not establish that the Judgment was somehow procured by extrinsic fraud or mistake.

3. Timeliness of the Motion

The opposition asserts that Mr. Ruelas' motion was not served within the time allowed by Code of Civil Procedure section 683.160(a).

Section 683.160(a) provides, in pertinent part, that the notice of renewal of judgment shall

inform the judgment debtor that "...the judgment debtor has 60 days within which to make a motion to vacate or modify the renewal." Code Civ. Proc. § 683.160(a).

Section 683.170(a) provides that "[t]he renewal of a judgment pursuant to this article may be vacated on any ground that would be a defense to an action on the judgment..." Code Civ. Proc. § 683.170(a). The judgment debtor has 60 days after service of the notice of renewal apply by noticed motion under this section for an order of the court vacating the renewal of the judgment. Code Civ. Proc. § 683.170(b).

However, it is well established that a motion for relief from a default judgment based on extrinsic fraud or mistake is not governed by any statutory time limit. See CJER, *California Judges Benchbook: Civil Proceedings after rial* (2024) ("CJER Civ. Proc. before Trial"), § 1.89 (and authorities cited therein). Such a motion may be brought at any time. Id. The Court may deny the motion if the defendant has not exercised diligence in seeking relief after discovering extrinsic fraud or mistake and the plaintiff has been prejudiced. *Id*.

In any event, this issue is moot because the Court does not find a basis, on the merits, to set aside the Judgment due to extrinsic fraud or mistake.

Disposition

The Court finds and orders as follows:

1. The Motion to Set Aside is DENIED.

15. 9:00 AM CASE NUMBER: MSL22-00470
CASE NAME: MARIA BUSTAMANTE VS. MADELINE KHORSHIDCHEHR
HEARING IN RE: MOTION TO COMPEL INITIAL RESPONSES TO REQUEST FOR INTERROGATORIES
FILED BY:
TENTATIVE RULING:

Plaintiff Maria Bustamante ("Plaintiff") filed a Motion to Compel Initial Responses to Requests for Form Interrogatories, Special Interrogatories, Request for Admissions, and Production of Documents, Set One and for Monetary Sanction on December 17, 2024 (the "Motion to Compel"). The Motion to Compel seeks to compel responses to certain discovery requests propounded by Plaintiff to defendant Madeline Khorshidchehr ("Defendant"). The Motion to Compel was initially set for hearing on March 17, 2025. Subsequently, the hearing was reset for March 18, 2025 in Department 34.

Background

The Motions to Compel relates to four separate discovery requests—Form Interrogatories, Special Interrogatories, Request for Admissions and Request for Production of Documents, Set One—served by Plaintiff on Defendant. Motion to Compel, Declaration of Maria Bustamante, (the "Bustamante Decl."), ¶2. Collectively, these discovery requests are referred to herein as the "Discovery Requests." The Discovery Requests were served by mail on Defendant's attorney Vanessa Himelblau, via U.S. mail, on April 24, 2024. *Id*. Ms.

Himelblau was counsel of record for Defendant. See Answer filed August 23, 2023. Later a Notice of Change of Attorney was filed July 31, 2024 and Defendant's new counsel was Lawrence E. Hart.

With a five calendar day extension for service of the Discovery Requests by mail, the responses were due to be served on or before May 29, 2024 (30 days after the service date was May 24, 2024; five calendar days thereafter fell on May 29, 2024).

No responses were received before the deadline or afterward. Bustamante Decl., ¶2. Despite meet and confer efforts, including attempted communication with new counsel Mr. Hart, responses were still not received. See *id*. at ¶¶3-4.

Analysis

Civil discovery in California is governed by the Civil Discovery Act. See Code Civ. Proc. §§ 2016.010–2036.050. The Civil Discovery Act provides litigants with the right to broad discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402. In general, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.010; see *Sinaiko Healthcare Consulting, Inc.*, *supra*, 148 Cal.App.4th at 402.

Where a party to whom a discovery request is propounded fails to serve a timely response, the propounding party may move for an order compelling a response. See Code Civ. Proc. § 2030.290 (as to interrogatories); Code Civ. Proc. § 2031.300 (as to demand for inspection of documents. The propounding party may also seek the imposition of monetary sanctions. *Id*.

Having considered the moving papers and any further pleadings submitted, the Court makes the following findings as to the Discovery Requests at issue:

1. Defendant was duly served with the subject Discovery Requests.
2. No timely response was made to the Discovery Requests by Defendant.
3. Plaintiff engaged in meet and confer efforts and Defendant did not respond to those communications and did not provide responses to the Discovery Requests.
4. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Defendant's failure to respond to the Discovery Requests even after the deadline to do so had passed and demands for responses were made constitutes failing to respond to an authorized method of discovery, pursuant to Code of Civil Procedure section 2023.010(d).

Defendant's failure to respond to meet and confer efforts regarding the Discovery Requests constitutes failing to confer with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, pursuant to Code of

Civil Procedure section 2023.010(i).

The Court finds that the foregoing conduct by Defendant constituted conduct that was a misuse of the discovery process within the meaning of Code of Civil Procedure section 2023.030 and that such conduct warrants the imposition of monetary sanctions. In failing to timely respond to the Discovery Requests, the Court finds that Defendant did not act with substantial justification. Furthermore, the Court does not find any other circumstances that would make the imposition of monetary sanctions unjust.

Disposition

The Court finds and orders as follows:

1. The Court is inclined to grant the Motion to Compel as to the Form Interrogatories, Special Interrogatories and Request for Production of Documents and make the findings set forth above, including regarding the imposition of sanctions.
2. The Court is inclined to deny the Motion to Compel as to the Request for Admissions. The Code does not provide for such a remedy with respect to a request for admissions. See Code Civ. Proc. § 2033.280; see Weil & Brown, et al., *Cal. Prac. Guide: Civ. Pro. Before Trial* (The Rutter Group 2024), § 8:1370. The proper remedy is a motion for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted. *Id*.
3. **However, the Motion to Compel is CONTINUED for hearing to April 22, 2025, 9:00 am in Department 34.**
4. **The Proof of Service filed December 20, 2024 as to the Motion to Compel is defective. Paragraph 5 fails to state the person served or their address. Plaintiff shall either amend the Proof of Service to reflect the particulars of such service if previously done or else ensure that proper service is done hereafter and a further proof of service is duly filed.**