SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 04/01/2025

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: L24-04945
CASE NAME: JPMORGAN CHASE BANK N.A. VS. DAVID CHOI
COURT TRIAL HEARING 2 HOURS - ZOOM
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR IN-PERSON FOR TRIAL. Department 34 is located at the George D. Carroll Courthouse, 100 – 37th Street, Richmond, California 94805.

2. 10:00 AM CASE NUMBER: L23-06544
CASE NAME: SYNCHRONY BANK VS. MATA ENESI
COURT TRIAL HEARING TE 5-7 DAYS
FILED BY:
TENTATIVE RULING:

PARTIES TO APPEAR IN-PERSON FOR TRIAL. Department 34 is located at the George D. Carroll Courthouse, 100 – 37th Street, Richmond, California 94805.

Law & Motion

3. 9:00 AM CASE NUMBER: L22-01264
CASE NAME: WELLS FARGO BANK, N.A. VS. SAMUEL WALUSIMBI
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL UNDER C.C.P. 664.6 & ENTER JUDGMENT PURSUANT TO STIPULATION**
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff WELLS FARGO BANK, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal under C.C.P. § 664.6 & Enter Judgment Pursuant to Stipulation ("Motion to Enter Stipulated Judgment after Default") on November 21, 2024. The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025.

Background

The parties entered into that certain settlement agreement filed September 30, 2022 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $9,999.64, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Shley Mulhorn filed November 21, 2024 ("Supporting Declaration"), ¶¶1-4 and **Exhibit 1** thereto. The parties entered into a stipulation for entry of judgment in the event of a default. *Id*., **Exhibit 1,** ¶10.

Defendant defaulted on the Payment Terms and Conditions. *Id*. at ¶¶4-5. Defendant failed to cure after notice. *Id*. at ¶6 and **Exhibit 2** thereto. After credit for amounts paid, there remains $7,109.64 due and owing, plus costs of $300.00. *Id*. at ¶¶8-9.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $7,109.64, plus costs of $300.00.
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

4. 9:00 AM CASE NUMBER: L22-03530
CASE NAME: BANK OF AMERICA, N.A. VS. MOHANIA WILLIAMS
***HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT (CCP 664.6) FILED BY PLNTF**
FILED BY: BANK OF AMERICA, N.A.
****TENTATIVE RULING:****

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Enforce Settlement ("Motion to Enter Stipulated Judgment after Default") on December 3, 2024. The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025.

Background

The parties entered into that certain settlement agreement on or about March 14, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $2,325.77 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Flint C. Zide filed December 3, 2024 ("Supporting Declaration"), ¶¶3-4 and **Exhibit 1** thereto. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. *Id.*, **Exhibit 1, ¶¶**1-4.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶¶5-6. No notice or opportunity to cure is required under Settlement Agreement. *Id*. at ¶7.

After credit for amounts paid, there remains $1,235.15 due and owing, plus costs of $300.00. *Id*. at ¶7.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $1,235.15, plus costs of $300.00.
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

5. 9:00 AM CASE NUMBER: L22-05633
CASE NAME: PORTFOLIO RECOVERY ASSOCIATES, LLC VS. KASHIF IRFAN
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT UNDER**

TERMS OF STIPULATED SETTLEMENT & NTC. MO; MEMO PTS&AUTH IS; REQ JUDC NTC; [PROP] ORDER
FILED BY: PORTFOLIO RECOVERY ASSOCIATES, LLC
TENTATIVE RULING:

Plaintiff Portfolio Recovery Associates, LLC ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on November 19, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025.

Background

The parties entered into that certain settlement agreement filed on or about May 15, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $11,940.8 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Settlement Agreement, ¶¶1-4; see also Declaration filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶2-3. The Court hereby takes judicial notice of the Settlement Agreement. The parties entered into a stipulation for entry of judgment in the event of a default. Settlement Agreement, ¶¶3-4.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. Defendant failed to cure after notice. *Id*. at ¶6 and **Exhibit A** thereto.

After credit for amounts paid, there remains $10,340.81 due and owing, plus costs of $868.50. *Id*. at ¶8.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $10,340.81, plus costs of $868.50.
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

6. 9:00 AM CASE NUMBER: L23-00332
CASE NAME: PORTFOLIO RECOVERY ASSOCIATES LLC VS. ELISSANDRO NEVES

***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT UNDER TERMS OF STIPULATED SETTLEMENT**
FILED BY: PORTFOLIO RECOVERY ASSOCIATES LLC
****TENTATIVE RULING:****

Plaintiff Portfolio Recovery Associates, LLC ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on November 20, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025.

Background

The parties entered into that certain settlement agreement filed on April 28, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $4,800.38 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Settlement Agreement, ¶¶1-4; see also Declaration of Gregory Parks filed November 20, 2024 filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶2-3. The Court hereby takes judicial notice of the Settlement Agreement. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. See Settlement Agreement, ¶¶1-4.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. Defendant failed to cure after notice. Supporting Declaration, ¶6 and **Exhibit A** thereto.

After credit for amounts paid, there remains $1,100.38 due and owing, plus costs of $490.50. See Supporting Declaration, ¶¶7-8.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $1,100.38, plus costs of $490.50.
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

7. 9:00 AM CASE NUMBER: L23-03751
CASE NAME: BANK OF AMERICA N.A. VS. OMAR ESCOBAR

***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT UNDER TERMS OF STIPULATED SETTLEMENT**
FILED BY: BANK OF AMERICA N.A.
TENTATIVE RULING:

Plaintiff Bank of America N.A. ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on November 19, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025.

Background

The parties entered into that certain settlement agreement filed on October 2, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $10,269.65 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Settlement Agreement, ¶¶1-4; see also Declaration filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶2-3. The Court hereby takes judicial notice of the Settlement Agreement. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. See Settlement Agreement, ¶¶4 and 7.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. Defendant was given notice of default. *Id.* at ¶6 and **Exhibit A** thereto. No opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶7.

After credit for amounts paid, there remains $7,576.60 due and owing, plus claimed costs of $868.50. See Supporting Declaration, ¶¶7-8.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.
2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $7,576.60. **PARTIES TO APPEAR TO ADDRESS COSTS.**
4. Plaintiff's submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

8. 9:00 AM CASE NUMBER: L23-07037
CASE NAME: PORTFOLIO RECOVERY ASSOCIATES LLC VS. ERIKA CHAVEZ
***HEARING ON MOTION IN RE: MOTION FOR JUDGMENT ON THE PLEADINGS FILED BY PLN ON 10/22/24**
FILED BY: PORTFOLIO RECOVERY ASSOCIATES LLC
****TENTATIVE RULING:****

Plaintiff Portfolio Recovery Associates, LLC ("Plaintiff") filed a Motion for Judgment on the Pleadings on October 22, 2024 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on March 21, 2025. Subsequently, the matter was continued to April 1, 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. Plaintiff contends that defendant Erika Chavez (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. Matters that may be judicially noticed include a party's admissions or concessions which cannot reasonably be controverted. *Pang v. Beverly Hospital, Inc.* (2000) 79 Cal.App.4th 986, 989-990.

Plaintiff's Complaint alleges causes of action for Common Counts (Account Stated and Open Book Account) based on the allegation that Defendant became indebted in the amount of $3,048.44 on a Synchrony Bank credit account. See Complaint filed December 21, 2023, p. 2, ¶1 *et seq*. It is alleged that the Plaintiff is the successor-in-interest to the original creditor on this debt. *Id*. at pp. 2-3, ¶12.

Defendant's Answer was filed February 16, 2024. The Answer denied the allegations of each paragraph of the Complaint. See Answer filed February 16, 2024.

Later, Plaintiff filed a motion to deem the truth of matters admitted in a set of Request for Admissions served on Defendant which was granted by the Court. See Minute Order dated September 13, 2024 (the "Deemed Admitted Order"). Plaintiff's request for judicial notice of this minute order is GRANTED.

Based upon the Deemed Admitted Order, it is evident that Defendant has been deemed to admit to the fact of the subject debt and the fact that there is no cognizable defense to the

subject indebtedness. See Deemed Admitted Order ("Plaintiff s motion for order to deem matters admitted is granted. Motion was unopposed. Requests for admissions, set one, numbers 1-9 are deemed admitted.").* Those admissions are binding upon Defendant for purposes of a motion for judgment on the pleadings. *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 746 ("Judicial admissions may be made in a pleading, by stipulation during trial, or by response to request for admission.").

Those admissions are sufficient to constitute a cause of action for Open Book Account against Defendant.** 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. Among other things, the RFAs admitted include an admission of the fact of the indebtedness on the account maintained by Plaintiff's predecessor-in-interest. See RFA No. 3 (predecessor rendered periodic statements to Defendant) and RFA No. 4 ("As of on or about December 21, 2023, the balance owed by Erika Chavez on credit account number [xxxx]3297 was $ 3,048.44.") and RFA Nos. 7 and 8 (Plaintiff was assigned the account collection).

While the Defendant made express denials by way of the Answer, Defendant failed to raise and/or interpose those denials timely in response to the requests for admissions and the Deemed Admitted Order has been made by the Court and has not been set aside. Nor has Defendant opposed this Motion for Judgment on the Pleadings.

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 of action against the Defendant for Open Book Account.
2. The pleadings, in light of the Deemed Admitted Order, do not state facts sufficient to constitute a defense to the Complaint as to Plaintiff's 2nd Cause of Action for Open Book Account.
3. Defendant became indebted in the amount of $3,048.44 (the "Debt")*** on the operative contract as pled in Plaintiff's 2nd Cause of Action for Open Book Account.
4. 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 as to Plaintiff's 2nd Cause of Action for Open Book Account.

*While the moving party Plaintiff proffered a copy of the relevant Deemed Admitted Order which references the numbers of the Requests for Admissions (RFAs) deemed admitted, the document does not contain the actual language of the RFAs. That language is summarized in the moving Memorandum of Points and Authorities (MPA) filed as part of the Motion for Judgment on the Pleadings. It is better practice to attach the text of the RFAs to the moving papers for the Court's review. Nonetheless, in the exercise of its discretion, the Court hereby takes judicial notice of the filed pleadings regarding the Deemed Admitted Order, including the supporting declaration with a copy of the text of the RFAs. See Amended Notice of Motion and Motion for Order that Matters in Request for Admission of

Truth of Facts Be Admitted filed April 24, 2024, Exhibit A ("REQUESTS FOR ADMISSION").

**The Court is not granting this motion as relates to Plaintiff's cause of action for Account Stated. 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. The RFAs do not admit facts sufficient establish all of the elements of an Account Stated and/or to otherwise negate the relevant denials of the Answer on such matters.

***Notwithstanding the moving papers' reference to a balance owed of "$3,044.10," the record appears to support a finding of $3,048.44 based on the RFAs.

Costs

As part of the moving papers, a Memorandum of Costs was filed October 22, 2024. The Amended Memorandum of Costs reflects recoverable costs in the sum of $374.61.

Disposition

The Court finds and orders as follows:

1. The Motion for Judgment on the Pleadings is GRANTED IN PART as to Plaintiff's 2nd Cause of Action for Open Book Account. In all other respects, it is DENIED.
2. PARTIES TO APPEAR to address Plaintiff's 1st Cause of Action for Account Stated. The Court is prepared to grant judgment on Plaintiff's Complaint contingent upon dismissal of that cause of action.

9. 9:00 AM CASE NUMBER: L24-00783
CASE NAME: BANK OF AMERICA N.A. VS. FERNANDO GARCIA
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUEST FOR ADMISSIONS ADMITTED (CCP SEC 2033.280) BY PLNTF**
FILED BY: BANK OF AMERICA N.A.
TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Deem Request for Admissions Admitted on November 18, 2024 (the "Motion to Deem Admissions").* The Motion to Deem Admissions was set for hearing on April 1, 2025. The motion is unopposed.

*Although the moving papers were filed on November 18, 2024, it appears that a second set of moving papers was filed on January 7, 2025 for the same hearing date. Those papers were not styled as "amended" papers and the papers appear identical. However, the Court is not inclined to compare them line by line to ascertain any difference. The Court has reviewed and consider the initial moving papers filed November 18, 2024.

Background

Plaintiff served Defendant Fernando Guarne Garcia ("Defendant") with a Requests for Admission (Set One). See Declaration of Robert Kayvon filed November 18, 2024 ("Supporting Declaration"), ¶3 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on April 18, 2024 by mail. *Id*. at ¶3 and **Exhibit A** [attached Proof of Service dated April 18, 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 May 23, 2024 (30 days from and after April 18, 2024 was May 18, 2024 and five calendar days thereafter fell on May 23, 2024). No responses were received by that deadline. See Supporting Declaration, ¶4. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶5.

*Although the Supporting Declaration recites the service date as "4/19/2024," the Proof of Service reflects April 18, 2024.

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 have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and orders as follows:

1. Motion to Deem Admissions is GRANTED.
2. The truth of the facts recited in RFA Nos. 1 through 10 are DEEMED ADMITTED by Defendant.
3. A proposed form of judgment was lodged with the Court which the Court shall execute and enter.

10. 9:00 AM CASE NUMBER: L24-01581
CASE NAME: TD BANK USA N.A. VS. DARLENE GRAHAM
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE DEEMED ADMITTED**
FILED BY: TD BANK USA N.A.
****TENTATIVE RULING:****

Plaintiff TD BANK USA, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 27, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on April 1, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Darlene Graham ("Defendant") with a Requests for Admission (Set One). See Declaration of Ruonan Wang filed November 27, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on August 29, 2024 by mail. *Id*. and **Exhibit 1** [attached Proof of Service dated August 29, 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 3, 2024 (30 days from and after August 29, 2024 was September 28, 2024 and five calendar days thereafter fell on October 3, 2024). No responses were received by that deadline. See Supporting Declaration, ¶3. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶4 and **Exhibit 2** thereto.

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 have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and 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. A proposed form of judgment was lodged with the Court which the Court shall execute and enter.

11. 9:00 AM CASE NUMBER: L24-02754
CASE NAME: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS. SANAE HENDRIX
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED AND OF NONAPPEARANCE AGAINST DEF SANAE HENDRIX; NTC OF MOTION**
FILED BY: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
****TENTATIVE RULING:****

Plaintiff State Farm Mutual Automobile Insurance Company ("Plaintiff") filed a Motion to Deem Requests for Admissions Admitted on November 20, 2024 as against defendant Sanae Hendrix ("Defendant Hendrix"). On the same date, Plaintiff also filed a separate Motion to Deem Requests For Admissions Admitted as against defendant Natasha Taylor ("Defendant Taylor"). The two pending motions are collectively referred to herein as the "Motions to Deem Admissions." The Motions to Deem Admissions were both set for hearing on April 1, 2025. Opposition papers were filed on February 20, 2025.

Background

Plaintiff served Defendant Hendrix and Defendant Taylor with separate sets of requests for admissions. See Declaration of Tristan P. Espinosa filed November 20, 2024 ("Supporting Declaration re RFAs to Defendant Hendrix"), ¶1 and **Exhibit A** thereto (the "RFAs to Defendant Hendrix"); see Declaration of Tristan P. Espinosa filed November 20, 2024 ("Supporting Declaration re RFAs to Defendant Taylor"), ¶1 and **Exhibit A** thereto (the "RFAs to Defendant Taylor"). The RFAs to Defendant Hendrix and RFAs to Defendant Taylor are collectively referred to herein as the "RFAs."

The RFAs to both defendants were served on July 9, 2024 by email (*khaledali@GEICO.com* and *dmcdaniel@geico.com*) to defendants' counsel. *Id*. and **Exhibit A** [attached Declaration of Service dated July 9, 2024 as to both sets (the "Proofs of Service")].

With a two court day extension for service of the RFAs by email, the responses were due to be served on or before August 12, 2024 (30 days from and after July 9, 2024 was August 8, 2024 and two court days thereafter fell on Monday, August 12, 2024). See *id*. at ¶2. An extension was granted to September 26, 2024. *Id*. at ¶3. No responses were received by that deadline. See *id*. at ¶¶4-5. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*.

Defendants' Opposition papers indicate that on February 10, 2025 the defendants provided Plaintiff with responses to the RFAs. See Defendants' Opposition, *et al*., filed February 20, 2025. Although this assertion was not contained in a properly filed declaration signed under penalty of perjury and the attachments were not attached to any such declaration, the Court will reply upon and consider counsel's representation as an officer of the Court that those pleadings were served as represented and that attachments are true and correct copies of the pleadings. Those copies do contain proofs of service. The better practice would be to attach those pleadings to a filed declaration.

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.

A responding party's service, before the hearing on a "deemed admitted" motion, of substantially complaint responses, defeats a propounding party's attempt to have the requests for admissions deemed admitted. Code Civ. Proc. § 2033.280(c); *St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at 776; see also CJER, *California Judges Benchbook: Civil Proceedings - Discovery* (2024) ("CJER Civ. Proc. Discovery"), § 21.22. A monetary sanction remains strictly mandatory against the party or attorney, or both, whose late response necessitated the making of the motion. Code Civ. Proc. § 2033.280(c); see CJER Civ. Proc. Discovery, § 21.22.

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

1. Defendants were duly served with the subject RFAs.
2. Counsel for defendants sought and obtained an extension of time for responses to the RFAs.
3. Defendants' counsel had knowledge of the RFAs and the duty and obligation to respond on behalf of the Defendants.
4. No timely response was made to the RFAs by defendants.
5. Plaintiff engaged in meet and confer efforts and defendants did not respond to those communications and did not provide responses to the RFAs prior to the bringing of the Motions to Deem Admissions.
6. After the filing of the subject Motions to Deem Admissions, defendants served Plaintiff with their respective responses to the RFAs. Those responses were verified and substantially code compliant.

<u>Sanctions</u>

1. Defendants' failure to respond to the RFAs by the agreed extended deadline and continuing to do so even after that deadline 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).
2. Defendants' failure to respond to meet and confer efforts regarding the RFAs 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).
3. The Court finds that the foregoing conduct by Defendants 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 RFAs, the Court finds that Defendants did not act with substantial justification.
4. Moreover, monetary sanctions are mandatory pursuant to Code of Civil Procedure section 2033.280. Code Civ. Proc. § 2033.280(c); see *St. Mary v. Superior Court*, *supra*, 223 Cal.App.4th at 776 ("The court must also impose monetary sanctions upon the party and/or the attorney for the failure to serve a timely response to the RFAs.").
5. The Court finds that the failure was attributable to the conduct of the Defendants'

counsel who engaged in the foregoing conduct with knowledge of the RFAs and the duty and obligation to respond on behalf of the Defendants.

Disposition

The Court further finds and orders as follows:

1. The Motions to Deem Admissions are DENIED.
2. Defendants' counsel, the Law Offices of Catherine A. Walsh, prior handling attorney Khaled Ali (Bar No. 351866) and Government Employees Insurance Company, aka "GEICO," aka "GEICO Staff Counsel Department," jointly and severally, shall pay monetary sanctions to Plaintiff in the amount of **$1,320.00** (the "Monetary Sanctions"). The Court finds that the Monetary Sanctions are reasonable expenses, including attorneys' fees and costs, incurred by Plaintiff as a result of the foregoing conduct by Defendants' counsel. In fixing said amount, the Court has considered all evidence in the record before the Court, including the Supporting Declaration re RFAs to Defendant Hendrix and the Supporting Declaration re RFAs to Defendant Taylor. The Court is also familiar with the extent of the proceedings on the Motions to Deem Admissions and the time attendant to the prosecution of law and motion proceedings through publication of a tentative ruling.
3. The Monetary Sanctions shall be paid within thirty (30) days of notice of entry of this order.

12. 9:00 AM CASE NUMBER: L24-02754
CASE NAME: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY VS. SANAE HENDRIX
***HEARING ON MOTION IN RE: MOTION TO DEEM REQUESTS FOR ADMISSIONS ADMITTED AND OF NONAPPEARANCE AGAINST DEF NATASHA TAYLOR; NTC OF MOTION**
FILED BY: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
TENTATIVE RULING:

SEE LINE 11 ABOVE.

13. 9:00 AM CASE NUMBER: L24-03529
CASE NAME: LOYA CASUALTY INSURANCE COMPANY VS. PEDRO ESPINOZA
***HEARING ON MOTION IN RE: MOTION TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION**
FILED BY: LOYA CASUALTY INSURANCE COMPANY
TENTATIVE RULING:

Plaintiff Loya Casualty Insurance Company ("Plaintiff") filed a Motion to Quash Service of Summons for Lack of Personal Jurisdiction on November 25, 2024 (the "Motion to Quash"). The Motion to Quash was set for hearing on April 1, 2025. The motion is unopposed.

Background

Plaintiff filed this action on April 30, 2024, alleging a cause of action sounding in

subrogation to recoup $5,517.72 paid out to its insured in connection with a collision between the insured's vehicle and defendant Pedro Espinoza's ("Defendant") vehicle. See Complaint filed April 30, 2024. Defendant was served and filed an Answer on October 7, 2024. At that same time, Defendant filed a Cross-Complaint naming Jannete Montes de Ora ("Cross-Defendant Montes de Orca"). See Cross-Complaint filed October 7, 2024.

That Cross-Complaint contains a cause of action for indemnification against Cross-Defendant Montes de Orca. *Id*. It also contains causes of action for "[p]roperty [d]amage," general negligence and neglect operation of a motor vehicle against Cross-Defendant Montes de Orca. *Id*. Unnamed fictious DOE cross-defendants were named as well. *Id*.

A proof of service was filed October 9, 2024 by Defendant. It reflects service of the Answer, Cross-Complaint and a Case Management statement on Plaintiff's counsel. See Proof of Service filed October 9, 2025.

Plaintiff's Motion to Quash contends that service is defective because the person served, Jon Hellesen, is not the cross-defendant or her attorney. See Declaration of Charlotte M. Konczal ("Supporting Declaration"), ¶5. Mr. Hellesen no longer represents Plaintiff.* *Id*. at ¶6.

The Court also notes that there is a hearing date of April 24, 2025 on an Order to Show Cause (OSC) issued to Defendant as to why the Cross-Complaint should not be dismissed for failure to serve it. See Minute Order dated January 27, 2025.

*A Notice of Change of Handling Attorney was filed on November 26, 2024, although the law firm remains the same.

Analysis

Code of Civil Procedure section 418.10 sets forth a number of different procedural actions that a defendant may take on or before the last day of his or her time to plead (or as otherwise allowed by the court). See Code Civ. Proc. § 418.10(a). Notably, it is the name defendant (or cross-defendant) that has these procedural remedies, not another party. *Id*.

Accordingly, Plaintiff does not have standing to raise the lack of deficiency of service on behalf of Cross-Defendant Montes de Orca. Indeed, Plaintiff's motion is quite clear that Plaintiff's attorneys do not even represent Cross-Defendant Montes de Orca. Supporting Declaration, ¶7.

In any event, the pending motion is somewhat of a case of "tilting at windmills." It does not appear that Defendant even contends that the subject service constitutes valid service of process on Cross-Defendant Montes de Orca. On review of the Court's file, Defendant has sought leave to serve Cross-Defendant Montes de Orca by publication. That request was denied, without prejudice, by the Court. See Order entered February 10, 2025. An Affidavit of Unsuccessful Service was filed by Sheriff's Office on January 17, 2025. Moreover, it should also be noted that the proof of service filed October 9, 2024 by Defendant made no reference to the Summons on the Cross-Complaint. See Code Civ. Proc. § 428.60(1) ("If a party has not appeared in the action, a summons upon the cross-complaint shall be issued and served upon him in the same manner as upon commencement of an original action.").

Accordingly, it is evident that Defendant has yet to perfect service of the Cross-Complaint on Cross-Defendant Montes de Orca and there is nothing even to quash because there has been no attempted service of a summons on anyone on her behalf.

Disposition

The Court further finds and orders as follows:

1. The Motion to Quash is DENIED.
2. The April 24, 2025 hearing date on the OSC issued to Defendant as to why the Cross-Complaint should not be dismissed for failure to serve it remains on calendar as scheduled.

14. 9:00 AM CASE NUMBER: L24-04609
CASE NAME: CAPITAL ONE N.A. VS. ERIKA RANAHAN
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT UNDER TERMS OF STIPULATED SETTLEMENT**
FILED BY: RANAHAN, ERIKA
TENTATIVE RULING:

Plaintiff Capital One, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on November 26, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025. The motion is unopposed.

Background

The parties entered into that certain settlement agreement filed September 10, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $4,753.06, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Settlement Agreement, ¶¶1-4; see also Declaration filed as part of Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶¶2-3. The Court hereby takes judicial notice of the Settlement Agreement. As part of the Settlement Agreement, the parties entered into a stipulation for entry of judgment in the event of a default. See Settlement Agreement, ¶¶1-4 and 7.

Defendant defaulted on the Payment Terms and Conditions. Supporting Declaration, ¶5. Defendant failed to cure after notice. *Id.* at ¶6 and **Exhibit A** thereto.

After credit for amounts paid, there remains $4,223.00 due and owing, plus costs of $583.61. See Supporting Declaration, ¶¶7-8.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion.

2. The Court finds that Defendant is in default of the Settlement Agreement.
3. The Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $4,223.00, plus costs of $583.61.
4. Plaintiff's submitted form of money judgment against Defendant will be entered by the Court. Any prior dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

15. 9:00 AM CASE NUMBER: L24-05306
CASE NAME: BANK OF AMERICA N.A. VS. LATASHA DINH
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE DISMISSAL**
FILED BY: BANK OF AMERICA N.A.
TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Set Aside Dismissal on November 22, 2024("Motion to Set Aside Dismissal"). The Motion to Set Aside Dismissal was set for hearing on April 1, 2025. The motion is unopposed.

Background

This matter was dismissed by the Court on November 15, 2024 after the issuance of an Order to Show Cause (OSC) regarding a failure to appear at Case Management proceedings set in October 2024. See Minute Order dated November 15, 2024. Those proceedings were set pursuant to orders issued by the Court on or about August 8, 2024.

As pointed out in Plaintiff's moving papers, it appears that the notice to Plaintiff was directed at Plaintiff's counsel at an address which, inexplicably, was not the address of record on Plaintiff's pleadings and not a valid address for that office.

DAVID C. MCGAFFEY
PO BOX 109032
CHICAGO IL 60610

See Notice of Case Management Conference filed October 11, 2024; see also Declaration of Flint C. Zide, ¶3.

Analysis

It appears that the underlying notice was directed to an incorrect address as a result of the Court's error.

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion to Set Aside Dismissal is GRANTED.
2. The Court's order for dismissal made on November 15, 2024 is SET ASIDE and

VACATED.

3. A proposed form of order was lodged with the Court which the Court shall execute and enter.
4. In addition, the Clerk of the Court is directed to reset the matter for a Case Management Conference and to give notice of same to all parties at their addresses of record herein.

16. 9:00 AM CASE NUMBER: L24-06588
CASE NAME: CITIBANK N.A. VS. KEVEN WILLIAMS
***HEARING ON MOTION IN RE: MOTION FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE ADMITTED**
FILED BY: CITIBANK N.A.
****TENTATIVE RULING:****

Plaintiff CITIBANK, N.A. ("Plaintiff") filed a Motion for Order that Matters in Request for Admission of Truth of Facts be Deemed Admitted on November 18, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on April 1, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Keven Williams ("Defendant") with a Requests for Admission (Set One). See Declaration of Ruonan Wang filed November 18, 2024 as part of Motion to Deem Admissions ("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on September 24, 2024 by mail. *Id*. at ¶3 and **Exhibit A** [attached Proof of Service dated September 24, 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 29, 2024 (30 days from and after September 24, 2024 was October 24, 2024 and five calendar days thereafter fell on October 29, 2024). No responses were received by that deadline or through the time of the filing of the motion. 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. No opposition or other responsive pleadings by Defendant have been filed with the Court.

Sanctions

Plaintiff does not seek imposition of sanctions.

Disposition

The Court further finds and 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. A proposed form of judgment was lodged with the Court which the Court shall execute and enter.

17. 9:00 AM CASE NUMBER: MSL17-02593
CASE NAME: WELLS FARGO VS LEE
***HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL UNDER CCP 664.6 & ENTER JUDGMENT PURSUANT TO STIPULATION**
FILED BY: WELLS FARGO BANK, N.A.
TENTATIVE RULING:

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed a Motion to Vacate Dismissal under C.C.P. § 664.6 & Enter Judgment Pursuant to Stipulation on November 25, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on April 1, 2025. The motion is unopposed.

Background

The parties entered into that certain settlement agreement filed June 1, 2021 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $4,676.00, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration in Support of Motion to Set Aside Dismissal to Enter Judgment Pursuant to Stipulation filed November 25, 2024 ("Supporting Declaration") ¶3 and **Exhibit 1** thereto. The parties entered into a stipulation for entry of

judgment in the event of a default. *Id*. at ¶8 and **Exhibit 1** thereto.

The Supporting Declaration's recitation of the Payment Terms and Conditions do not match the attached Settlement Agreement. Paragraph 4 of the Supporting Declaration states:

> Pursuant to the terms of the Stipulation, Defendant was to make payments of $69.50 on or before the 23rd of each and every consecutive month beginning March 23, 2021 continuing through and including April 23, 2026, followed by final payment of $26.00 on or before May 23, 2026. The total settlement amount was $8,076.00.

Supporting Declaration, ¶4.

However, Paragraph 1 of the Settlement Agreement reflects a stipulated Judgment amount of $4,676.00. See Settlement Agreement, ¶1, Supporting Declaration, **Exhibit 1**. Moreover, the payment terms are different, at least as to the regular monthly payment:

> (A) $75.00 shall be paid on or before the 23rd of each and every consecutive month commencing on or before March 23, 2021 through and including April 23. 2026;
>
> (B) $26.00 shall be paid on or before May 23, 2026;

See *id*. at ¶2. Nowhere in the Settlement Agreement does an amount of $8,076.00 appear. See Settlement Agreement, ¶1 *et seq*.

The Supporting Declaration represents that Defendant has made payments totaling $6,250.00 and has failed to remit any further payments, leaving a balance due of $1,976.00. See Supporting Declaration, ¶¶5 and 8.

Those figures do not appear to comport with the principal amount pursuant to the Settlement Agreement. Payment of $6,250.00 by the Defendant, if accurate, would actually exceed the stipulated amount to be paid. No ledger or other reconciliation was provided with the moving papers to shed light on this discrepancy.

Analysis

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. Motion to Enter Stipulated Judgment after Default is DENIED, without prejudice.