SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 05/13/2025

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

Law & Motion

1. 9:00 AM CASE NUMBER: L22-01405
CASE NAME: BANK OF AMERICA, N.A. VS. VAL RODRIGUES
***HEARING ON MOTION IN RE: FOR JUDGMENT ON THE PLEADINGS**
FILED BY:
TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion for Judgment on the Pleadings on November 1, 2024 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on April 21, 2025. Subsequently, the motion was

withdrawn by the moving party. However, the motion was later re-calendared by the Court's order dated January 23, 2025 and the matter was reset for hearing on April 22, 2025 in Department 34 of the Court.

However, there was no indication on the Court's docket that notice of this reset date was given to defendant Val Rodrigues ("Defendant"). Accordingly, the Motion for Judgment on the Pleadings was continued for hearing to May 13, 2025, 9:00 am, in Department 34 of the Court.

Plaintiff was ordered to give notice to Defendant of the reset hearing date on the Motion for Judgment on the Pleadings within ten (10) days and to file a proof of service reflecting such notice. Such proof of service was filed with the Court on or about May 6, 2025, reflecting notice of the pending motion having been given to Defendant.

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 a cause of action for Common Counts (Open Book Account, Account Stated, Goods Sold and Delivered) based on the allegation that Defendant became indebted in the amount of $19,366.11 on a credit account. See Complaint filed April 19, 2022, p. 2, ¶¶8 and 10 and Attachment (1st Causes of Action). It is alleged that the Plaintiff is the successor-in-interest to the original creditor on this debt. *Id*. at Attachment, ¶CC-4.

Defendant's Answer was filed May 19, 2022. The Answer denies the allegations of the Complaint and states various affirmative defenses. See Answer filed May 19, 2022.

Later, Plaintiff filed a motion to deem the truth of matters admitted in a set of Request for Admissions (the "RFAs") served on Defendant which was granted by the Court. See Order entered June 3, 2024 (the "Deemed Admitted Order"). The Court takes judicial notice of the underlying court filings in the connection with the Deemed Admitted Order.

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 amount owing, $19,366.11. See Deemed Admitted Order; see also RFAs attached to Declaration of Kristen Dean filed March 19, 2024.

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.").

While the Defendant pled denials and defenses by way of the Answer, Defendant failed to raise those issues 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.

Arguably, the RFAs do not contain a catch all admission to the effect that there is no cognizable defense to the liability that would negate all of the pled affirmative defenses. See Code Civ. Proc. § 438(c)(1)(A) ("[i]f the moving party is a plaintiff," a motion for judgment on the pleadings may be made on the grounds that "...the complaint states facts sufficient to constitute a cause or causes of action against the defendant **and the answer does not state facts sufficient to constitute a defense to the complaint**.") (Emphasis added).

While some of the affirmative defenses are expressly negated by the admissions made as part of the Deemed Admitted Order, others are not. For example, the Answer pleads the defenses of "unclean hands" and "laches," among other defenses. See Answer, p. 2, ¶4. There is no RFA which admitted that any of those particular affirmative defenses is without merit or otherwise constituted any admission that all of the pled affirmative defenses are without merit. See RFAs Nos. 1 through 4.

Nonetheless, the Court concludes here that the admission made to the effect that "That $19,366.11 is the current principal balance due on YOUR ACCOUNT" implies an admission of no cognizable defense to the liability, especially in the absence of any opposition and showing to the contrary by Defendant.

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

1. Plaintiff's Complaint, on its face and considering the Deemed Admitted Order, states facts sufficient to constitute causes of action against the Defendant for Common Counts (1st Cause of Action). As to the 1st Cause of Action for Common Counts, the Court finds that pleadings are sufficient to constitute a cause of action based on a theory of Open Book Account.* The Court need not and does not consider the other alternative theories of liability (Account Stated and Goods Sold and Delivered).
2. The Court further finds that 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 1st Cause of Action for Common Counts on a theory of Open Book Account.
3. Defendant became indebted in the amount of $19,366.11 on an open book account, which amount is due and owing to Plaintiff as the successor-in-interest to the original creditor on the debt.

* 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.

Costs

The moving papers seek an award of recoverable costs in the sum of $596.71. However, it does not appear that any Memorandum of Costs or other supporting declaration(s) regarding costs were filed as part of the moving papers. Any recoverable costs may be sought by a timely filed Memorandum of Costs or otherwise in accordance with applicable law.

Disposition

The Court finds and orders as follows:

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

2. 9:00 AM CASE NUMBER: L23-00771
CASE NAME: CAVALRY SPV I, LLC, AS ASSIGNEE OF CITIBANK, N.A. VS. MOAZZEM H CHOWDHURY AKA MOAZZEM CHOWDHURY
***HEARING ON MOTION IN RE: FOR ORDER AMENDING JUDGMENT NUNC PRO TUNC**
FILED BY: CAVALRY SPV I, LLC, AS ASSIGNEE OF CITIBANK, N.A.
****TENTATIVE RULING:****

Plaintiff and judgment creditor Cavalry SPV, I, LLC ("Plaintiff") filed a Motion for Order Amending Judgment Nunc Pro Tunc on February 13, 2025 (the "Motion to Amend Judgment"). The Motion to Amend Judgment was set for hearing on May 13, 2025.

Background

A default money Judgment was entered herein against defendant and judgment debtor Moazzem H Chowdhury ("Defendant") on August 31, 2023 (the "Judgment"). The principal damages awarded were $3,882.39. *Id*. at ¶6. Plaintiff seeks to amend the Judgment to correct the amount of damages, which Plaintiff represents is actually $2,073.39.

Analysis

Plaintiff's motion relies upon Code of Civil Procedure section 473(d) in contending that the Court should amend the Judgment to correct the damages amount.

Under Section 473(d), "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed..." Code Civ. Proc. § 473(d); see *Machado v. Myers* (2019) 39

Cal.App.5th 779, 798.

It is evident that the form of Judgment was at variance with the actual request made, i.e. that judgment be rendered for the current principal balance of $2,073.39 in accord with the terms of the parties' stipulation. See Request for Entry of Default filed May 25, 2023. This was supported by the operative declaration submitted at the time. See Declaration in Support of Application for Entry of Default Judgment filed May 25, 2023, ¶8.c. ("...$2,073.39 remains due and owing as of May 1, 2023...").

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion to Amend Judgment is GRANTED.
2. Proposed forms of order and amended judgment were lodged with the Court which the Court shall execute and enter.

3. 9:00 AM CASE NUMBER: L23-03675
CASE NAME: DISCOVER BANK VS. SHANEA HUDSON
***HEARING ON MOTION IN RE: FOR ORDER AMENDING JUDGMENT NUNC PRO TUNC**
FILED BY: DISCOVER BANK
TENTATIVE RULING:

Plaintiff and judgment creditor Discover Bank ("Plaintiff") filed a Motion for Order Amending Judgment Nunc Pro Tunc on February 13, 2025 (the "Motion to Amend Judgment"). The Motion to Amend Judgment was set for hearing on May 13, 2025.

Background

A default money Judgment was entered herein against defendant and judgment debtor Shanea S Hudson ("Defendant") on January 5, 2024 (the "Judgment"). The principal damages awarded were $3,256.61, with costs of $431.40, for a total amount of $3,688.01. *Id*. at ¶6.

Plaintiff seeks to amend the Judgment to correct the amount of the total judgment, which Plaintiff represents is actually $3,598.01, not $3,688.01. This is because there was a "typo" in the total of the cost which resulted in the total amount of the Judgment to be overstated by $90.00.

Analysis

Plaintiff's motion relies upon Code of Civil Procedure section 473(d) in contending that the Court should amend the Judgment to correct the damages amount. Under Section 473(d), "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed..." Code Civ. Proc. § 473(d); see *Machado v. Myers* (2019) 39 Cal.App.5th 779, 798.

The form of Judgment conformed to the actual request made, i.e. that judgment be rendered for the current principal balance of $3,256.61 with costs of $431.40. See Request for Entry of Default filed September 13, 2023. This was based on the operative supporting declaration submitted at the time. See Declaration in Support of Default Judgment filed September 13, 2023, ¶5 ("...Court costs in this matter amount to $431.40...").

Plaintiff indicates that the correct court costs figure should have been $341.40. See Declaration of Counsel in Support of Motion for Order Amending Judgment Nunc Pro Tunc filed February 13, 2025, ¶4 *et seq*. This was apparently an error made by Plaintiff in transposing the first two digits of the amount of the costs figure.

"The term 'clerical error' covers all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. If an error, mistake, or omission is the result of inadvertence, but for which a different judgment would have been rendered, the error is clerical and the judgment may be corrected." *Estate of Douglas* (2022) 83 Cal.App.5th 690, 695.

Putting the erroneous cost figure before the Court was the result of an inadvertent error and not the exercise of judicial discretion. Accordingly, the Court concludes that the Judgment, as entered, was the result of an inadvertent clerical mistake.

The motion is unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion to Amend Judgment is GRANTED.
2. Proposed forms of order and amended judgment were lodged with the Court which the Court shall execute and enter.

4. 9:00 AM CASE NUMBER: L23-05424
CASE NAME: BANK OF AMERICA, N.A. VS. ELMORE ORTIZ
***HEARING ON MOTION IN RE: 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 February 13, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on May 13, 2025.

Background

The parties entered into that certain settlement agreement filed on or about December 22, 2023 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $25,319.97, 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.

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 $12,893.50 due and owing, plus costs of $868.50, for a total judgment of $13,762.00. See Supporting Declaration, ¶¶7-8.

Analysis

Defendant was duly served with the motion. 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 $12,893.50, plus costs of $868.50, for a total judgment of $13,762.00.
4. Plaintiff's submitted form of 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: L24-01974
CASE NAME: CROSS RIVER BANK VS. JARED DEVORE
***HEARING ON MOTION IN RE: TO SET ASIDE CCP 664.6 DISMISSAL AND ENTER JUDGMENT AGAINST DEFENDANT**
FILED BY: CROSS RIVER BANK
TENTATIVE RULING:

Plaintiff Cross River Bank ("Plaintiff") filed a Motion to Set Aside CCP 664.6 Dismissal and Enter Judgment on February 18, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on May 13, 2025.

Background

The parties entered into that certain settlement agreement filed on October 8, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $22,529.96 plus costs of $508.00, to be paid in accordance

with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Laura M. D'Anna filed February 18, 2025 ("Supporting Declaration"), ¶¶4-6 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,** ¶10.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶9. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶10.

After credit for amounts paid, there remains $20,598.96 due and owing, inclusive of costs. See Supporting Declaration, ¶¶9-11.

Analysis

Defendant was duly served with the motion. 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 $20,090.96, plus costs of $508.00.
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.

6. 9:00 AM CASE NUMBER: L24-04060
CASE NAME: WELLS FARGO BANK, N.A. VS. CANDIS SPENCER
***HEARING ON MOTION IN RE: MOTION FOR LEAVE TO FILE AN AMENDED ANSWER FILED BY DEF ON 3/13/25**
FILED BY: SPENCER, CANDIS
****TENTATIVE RULING:****

Defendant Candis Spencer ("Defendant") filed a Motion for Leave to File an Amended Answer on March 13, 2025 (the "Motion for Leave to Amend"). The Motion for Leave to Amend was set for hearing on May 13, 2025.

Background

Plaintiff Wells Fargo Bank, N.A. ("Plaintiff") filed its Complaint on May 17, 2024. Defendant filed an Answer on July 12, 2024, consisting of a general denial. See Answer filed July 12, 2024, p. 1 *et seq*.

Defendant seeks leave to amend that Answer, asserting that there are "newly discovered

legal and factual defenses..." See Motion for Leave to Amend, p. 1.

The proposed Answer is illegible. See Amended Answer, ¶4, **Exhibit A** to Defendant's Memorandum of Points and Authorities in Support of Leaved to File an Amended Answer filed March 28, 2025. Type written text appears superimposed over duplicative text in a manner that renders the content of the "AFFIRMATIVE DEFENSES" section incomprehensible. *Id*.

No proof of service of the Motion for Leave to Amend has been filed.

Analysis

Defendant attaches voluminous discovery related documents, including page after page of what appear to be produced and bate-stamped document production materials. The Court cannot imagine why a party would need to file 700+ pages of such materials on a request for leave to amend an answer. It does not appear to the Court that such volume of materials is remotely necessary or appropriate on the context of the present motion. Even if the substance and content of the opposing party's discovery responses were relevant, judiciously selected examples or excerpts would, in all likelihood, suffice, especially in conjunction with a proper declaration addressing the status of the litigation pleadings and the reasoning for any need to amend. If a party believed otherwise, the better practice would be to seek advance permission and direction for lodging of such voluminous material.

The frivolousness of such submissions is compounded by the observation that none of the attached exhibits are supported by any proper declaration. No declaration under penalty of perjury *regarding anything* has been submitted as part of the moving papers.

Submission of such voluminous materials in the manner done here is unnecessary, improper and frivolous. Defendant's counsel is admonished to refrain from doing so in the future.

Disposition

Accordingly, the Court orders as follows:

1. The Court does not find good cause to continue the current motion to a further hearing date for purposes of service.
2. The Motion for Leave to Amend is DENIED, without prejudice.
3. Defendant is admonished to review and comply with all applicable California Rules of Court ("CRC") and local court rules in connection with any re-filing of the motion.
4. The parties are also encouraged to meet and confer regarding a stipulation for leave to file an amended answer to avoid the necessity of further motion practice.

7. 9:00 AM CASE NUMBER: L24-04060
CASE NAME: WELLS FARGO BANK, N.A. VS. CANDIS SPENCER

***HEARING ON MOTION FOR DISCOVERY FOR ORDER DEEMING THE TRUTH OF THE MATTERS SPECIFIED IN REQ FOR ADMISSIONS AS ADMITTED**
FILED BY:
****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 Admissions as Admitted on November 7, 2024 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on March 25, 2025. An amended notice of motion was filed on December 26, 2024. At the hearing on the Motion to Deem Admissions, the court was advised that opposition papers had been submitted for filing by defendant Candis Spencer ("Defendant"). Because the papers had not, as of the time of the hearing, been processed for filing and reviewed by the Court, the Court continued the hearing to May 13, 2025. All parties have notice of the continued hearing date. The Court has received and reviewed the opposition papers filed March 12, 2025 and issues this revised tentative ruling.

Background

Plaintiff served Defendant with a Request for Admissions (Set One). See Declaration of David Bartley filed November 7, 2024 ("Supporting Declaration"), ¶¶2-3 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on July 23, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated July 23, 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 23, 2024 is August 22, 2024 and five calendar thereafter falls on August 27, 2024). No responses were received by the deadline. See *id*. at ¶4. Despite meet and confer efforts, no responses were received. See *id*. at ¶5 and **Exhibit 2**.

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*.

The opposition papers filed by Defendant concede that responses to the RFAs were not

timely served, but asserts that "from excusable neglect, transition of legal representation, Plaintiff's own delay in providing critical discovery documents, and the lack of any written agreement establishing the alleged debt." See Memorandum of Points and Authorities in Opposition to Plaintiff's Motion to Deem Request for Admissions Admitted filed March 12, 2025 ("Defendant's Opposition"), p. 1.

Although Defendant represents that Defendant "has now prepared responses," it does not appear that such responses have actually been served. It is not clear why. While Defendant requests leave to serve those responses, there is no citation to any authority to suggest that leave is required to serve the late responses and the Court is aware of none. Indeed, it is common practice to serve such responses as soon as possible in order to forestall an adverse ruling on a deemed admitted motion.

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. Defendant has failed to demonstrate that substantially complaint responses were served before the hearing on the motion.

The Court has considered and rejects Defendant's argument that the failure to timely respond was somehow excused because of purported delay or other inadequacy of Plaintiff's discovery responses. No authority is cited for such proposition and Defendant's discovery obligations are independent of any on the part of Plaintiff. The remedy for an opposing party's failure to provide proper discovery is an appropriate discovery motion. It is not a refusal or failure to respond to the opposing party's propounded discovery requests.

In any event, there is no evidence proffered to support such claims about discovery compliance by Plaintiff or lack thereof. No declaration under penalty of perjury *regarding anything* has been submitted as part of the opposition papers. See Defendant's Opposition, p. 1 *et seq*. Rather, Defendant simply attached some 500+ pages to a series of pleadings styled as a series of multiple "Memorandum of Points and Authorities" unsupported by any accompanying declaration under penalty of perjury. See *id*. and accompanying pleadings filed therewith, including the Exhibits thereto. **Submission of such voluminous materials in the manner done here is unnecessary, improper, frivolous and in violation of the California Rules of Court ("CRC").** See e.g. CRC 3.1113 (providing for a single supporting memorandum not to exceed 15 pages). **Defendant's counsel is admonished to refrain from doing so in the future.**

The contention that somehow the purported "Lack of a Written Agreement" justifies the failure to timely respond is likewise without merit. Discovery is the parties' opportunity to investigate the facts surrounding the various claims in the litigation. One cannot justify a

failure to respond to discovery simply by asserting that the other side's claims are invalid or uncertain. Each party has an independent obligation to respond to properly propounded discovery based on what is known to that party.

In connection with this argument, Defendant's Opposition includes a request the Court "Require Plaintiff to produce the alleged written agreement before proceeding further." See Defendant's Opposition, p. 4. That relief is not raised by a properly filed and noticed motion. The Court makes no such order.

Finally, the contention that the non-compliance was the result of excusable neglect, including because of a transition of legal representation, is without merit. As with the other arguments discussed above, no admissible, credible evidence has been proffered in support of this contention. Even if the contentions—as stated in the present Defendant's Opposition paper—were supported by a proper declaration, the Court does not conclude that any of the described circumstances justified the failure to timely respond. Those contentions are described in a cursory fashion. The paper fails to articulate facts sufficient for this Court to draw the conclusion that the failure to respond was due to some excusable neglect. The Court expresses no opinion on the merits of a motion to withdraw or amend Defendant's admissions after a deemed admitted order if supported by proper declaration with further facts.

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.

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, pursuant to RFA No. 8, is DEEMED ADMITTED by Defendant.
4. A proposed form of judgment was lodged with the Court which the Court shall execute and enter.

8. 9:00 AM CASE NUMBER: L24-05846
CASE NAME: CITIBANK N.A. VS. LESURE WEST
***HEARING ON MOTION IN RE: FOR JUDGMENT ON THE PLEADINGS**
FILED BY: CITIBANK N.A.
****TENTATIVE RULING:****

Plaintiff Citibank, N.A. ("Plaintiff") filed a Motion for Judgment on the Pleadings on February 18, 2025 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on May 13, 2025.

Background

The Motion for Judgment on the Pleadings is based on the contention that the 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 Lesure L West (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 a cause of action for Common Counts (Open Book Account, Account Stated, Money Lent and Money Paid at Defendant's Special Instance and Request) based on the allegation that Defendant became indebted in the amount of $4,150.00 on a Home Depot credit card account. See Complaint filed July 12, 2024, p. 2, ¶¶8-10 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 August 5, 2024. The Answer does not expressly deny any of the allegations of the Complaint. See Answer filed August 5, 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 not checked. *Id*. However, Defendant pled the following at Paragraph 4:

> Improper Notice of Breach.

Answer, p. 2, ¶4.

Whether an affirmative defense or an allegation of a failure to state an element of plaintiff's causes(s) of action, this allegation—fairly construed—disputes liability on the alleged debt. *Barasch v. Epstein* (1957) 147 Cal.App.2d 439, 443 ("Where the answer, fairly construed, suggests that the defendant may have a good defense, a motion for judgment on the pleadings should not be granted."); see CJER, *California Judges Benchbook: Civil*

Proceedings before Trial (2022) ("CJER Civ. Proc. before Trial"), § 12.162 ("A judge must deny a plaintiff's motion for judgment on the pleadings if the defendant's answer raises any material issue or sets up any affirmative matter constituting a defense."). Moreover, every allegation affirmatively pleaded in the answer must be deemed true. *Barasch v. Epstein*, *supra*, 147 Cal.App.2d at 443.

Plaintiff's description of the allegations of the Answer is inaccurate. Plaintiff's moving papers state:

> Defendant does not deny any allegations of the complaint. Defendant does not deny that defendant owes this debt. Defendant does not set forth any valid affirmative defenses. Defendant just describes some financial difficulties.

See Motion for Judgment on the Pleadings, p. 2, lns. 14-16.

Other than arguably the first sentence, the foregoing summary of the Answer is inaccurate. "Improper Notice of Breach" is pled at Paragraph 4, as discussed above. Interestingly, the last sentence ("Defendant just describes some financial difficulties.") does not remotely describe anything set out in the Answer filed in this case, suggesting that this briefing is merely boilerplate.*

*Unless Plaintiff was somehow served with a different Answer than was filed with the Court. Plaintiff did not attach a copy to the moving papers.

The Motion for Judgment on the Pleadings was unopposed.

Disposition

The Court finds and orders as follows:

1. The Motion for Judgment on the Pleadings is DENIED.
2. The Court will issue the order after hearing.

9. 9:00 AM CASE NUMBER: MSL21-02267
CASE NAME: BANK OF AMERICA, N.A. VS RIOJA
***HEARING ON MOTION IN RE: 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 February 13, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on May 13, 2025.

Background

The parties entered into that certain settlement agreement filed on or about December 21,

2021 (the "Settlement Agreement"), the terms of which included payment by the defendant debtor ("Defendant") in the amount of $18,435.97 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, ¶¶1-4.

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 $7,895.97 due and owing, plus costs of $867.00, for a total of $8,762.97. See Supporting Declaration, ¶¶7-8.

Analysis

Defendant was duly served with the motion. 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 $7,895.97, plus costs of $867.00, for a total of $8,762.97.
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.