

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 07/01/2025

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](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: L22-03346
CASE NAME: LVNV FUNDING LLC VS. PALMA CROSBY
***HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT CCP 664.6**
FILED BY: CROSBY, PALMA
TENTATIVE RULING:

Plaintiff LVNV Funding, LLC ("Plaintiff") filed a Motion to Enforce Settlement on April 29, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement in or about January 2023 (the

“Settlement Agreement”), the terms of which included payment by the defendant Palma Crosby (“Defendant”) in the amount of \$2,769.08, plus costs of \$300.00, to be paid in accordance with the terms thereof (the “Payment Terms and Conditions”). See Declaration of Flint C. Zide filed April 29, 2025 (“Supporting Declaration”), ¶3 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**, ¶¶1-7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶6. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶4 and 7.

After credit for amounts paid, there remains \$849.08 due and owing, plus costs of \$300.00. See Supporting Declaration, ¶¶7 and 9. Plaintiff seeks an additional sum of \$285.00 in costs for “Defendant's First Appearance Fee” and the costs of filing for the present motion. *Id.*

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 \$849.08, plus costs of \$585.00, for a total judgment of \$1,434.08.
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.

2. 9:00 AM CASE NUMBER: L22-04675
CASE NAME: LVNV FUNDING LLC VS. DENNIS MCGOVERN
*HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT CCP 664.6
FILED BY: MCGOVERN, DENNIS
TENTATIVE RULING:

Plaintiff LVNV Funding, LLC (“Plaintiff”) filed a Motion to Enforce Settlement on April 21, 2025 (“Motion to Enter Stipulated Judgment after Default”). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about March 6, 2023 (the

“Settlement Agreement”), the terms of which included payment by the defendant Dennis McGovern (“Defendant”) in the amount of \$2,783.56 plus costs, to be paid in accordance with the terms thereof (the “Payment Terms and Conditions”). See Declaration of Flint C. Zide filed April 21, 2025 (“Supporting Declaration”), ¶¶3-5 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**, ¶¶1-7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶6. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶4 and 7.

After credit for amounts paid, there remains \$845.56 due and owing, plus costs of \$594.90. See Supporting Declaration, ¶¶7 and 9.

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 \$845.56, plus costs of \$585.00, for a total judgment of \$1,430.56.^[FN1]
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.

^[FN1]Plaintiff’s supporting declaration references, in Paragraph 10, costs totaling \$309.90 before certain other costs items. However, that appears to be an error. Read in context, it appears that the intended base cost is the \$300.00 set forth in the Settlement Agreement plus the later incurred costs, which total \$585 in costs (\$300.00 + \$225.00 + \$60.00). See Supporting Declaration, ¶¶7 and 10. **If one of these listed cost items is inaccurate and the total should actually anything other than \$585.00, Plaintiff is ordered to appear to advise the Court in order that the ruling may be amended.**

3. 9:00 AM CASE NUMBER: L23-02628
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. MONICA GONZALEZ
*HEARING ON MOTION IN RE: MOTION TO SET ASIDE SETTLEMENT & ENTER JUDGMENT
FILED BY: GONZALEZ, MONICA L
TENTATIVE RULING:

Plaintiff JPMorgan Chase Bank, N.A. (“Plaintiff”) filed a Motion to Set Aside Notice of Settlement and Enter Judgment Pursuant to Stipulation on April 24, 2025 (“Motion to Enter Stipulated Judgment after Default”). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about June 20, 2023 (the “Settlement Agreement”), the terms of which included payment by the defendant Monica L Gonzalez (“Defendant”) in the amount of \$10,782.78, to be paid in accordance with the terms thereof (the “Payment Terms and Conditions”). See Declaration of Counsel filed April 24, 2025 as part of Motion to Enter Stipulated Judgment after Default (“Supporting Declaration”), ¶¶2 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 A**, ¶¶4, 7 and 9.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶¶6-7. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶4 and 9.

After credit for amounts paid, there remains \$4,488.78 due and owing. See Supporting Declaration, ¶¶7-8. No costs are sought by Plaintiff in the motion.

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 \$4,488.78.
4. Plaintiff’s submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior notice of settlement/dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

4. 9:00 AM CASE NUMBER: L23-04121
CASE NAME: DISCOVER BANK VS. BIKASH MALLA
*HEARING ON MOTION IN RE: MOTION TO SET ASIDE SETTLEMENT & ENTER JUDGMENT
FILED BY: MALLA, BIKASH

TENTATIVE RULING:

Plaintiff Discover Bank (“Plaintiff”) filed a Motion to Set Aside Notice of Settlement and Enter Judgment Pursuant to Stipulation on May 1, 2025 (“Motion to Enter Stipulated Judgment after Default”). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about December 14, 2023 (the “Settlement Agreement”), the terms of which included payment by the defendant Bikash Malla (“Defendant”) in the amount of \$9,330.70 plus costs of \$437.00, to be paid in accordance with the terms thereof (the “Payment Terms and Conditions”). See Declaration of Counsel filed May 1, 2025 as part of Motion to Enter Stipulated Judgment after Default (“Supporting Declaration”), ¶¶2-4 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**, ¶¶5 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶¶6-7. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶5, 7 and 9.

After credit for amounts paid, there remains \$3,730.70 due and owing, plus costs of \$437.00. 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 papers. **However, THE PARTIES ARE ORDERED TO APPEAR to confirm whether Defendant was duly served with the motion papers *which contained notice of the hearing information at the time of service or if separate notice of the hearing date was otherwise subsequently given.***
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 \$3,730.70, plus costs of \$437.00, for a total judgment of \$4,167.70.
4. Plaintiff’s submitted form of order and/or money judgment against Defendant will be entered by the Court. Any prior notice of settlement/dismissal entered herein against the Defendant is hereby set aside in connection with entry of such judgment.

5. 9:00 AM CASE NUMBER: L23-05281

CASE NAME: FLEXI-VAN LEASING, LLC VS. LAKHBIR BHAMBRA

*HEARING ON MOTION IN RE: FOR ORDER TO SET ASIDE JUDGMENT AND EXPUNGE ABSTRACT
FILED BY: BHAMBRA, LAKHBIR

TENTATIVE RULING:

Plaintiff and judgment creditor FLEXI-VAN LEASING, LLC (“Plaintiff”) filed a Motion for Order to Set Aside and Vacate Default Judgment and Expunge Abstract of Judgment on April 10, 2025 (“Motion to Set Aside Default Judgment”). The Motion to Set Aside Default Judgment was set for hearing on July 1, 2025.

Background

Plaintiff filed a Complaint on September 29, 2023. A default was entered against defendant and judgment debtor Lakhbir Bhambra, individually and dba A-One Trucking (“Defendant”) on January 29, 2024. Thereafter, a default money judgment was entered on May 7, 2024 against Defendant in the total amount of \$21,760.40 (the “Judgment”).

An Abstract of Judgment was issued by the Court on May 22, 2024 and recorded on or about May 30, 2024 in Contra Costa County with instrument number 2024-0050826 (the “Abstract of Judgment”). See Declaration of Steven A. Booska filed April 10, 2025 (the “Supporting Declaration”), ¶3.

Analysis

Plaintiff’s motion is based upon the representation that “Plaintiff has received new information about this case that indicates that service of process may not have been effective.” See Supporting Declaration, ¶3. Plaintiff requests that the Court vacate the default Judgment and the Abstract of Judgment. *Id.*

The Court has authority to vacate the Judgment pursuant to Code of Civil Procedure section 473(d). See Code Civ. Proc. § 473(d) (“The court ... may, on motion of either party after notice to the other party, set aside any void judgment or order.”); see also *Sindler v. Brennan* (2003) 105 Cal.App.4th 1350, 1353 [a judgment void on its face because rendered when the court lacked personal or subject matter jurisdiction or exceeded its jurisdiction in granting relief which the court had no power to grant is subject to collateral attack at any time and may be set aside under Code of Civil Procedure section 473, subdivision (d)].

Because the Judgment is being vacated, any judgment lien created by the Abstract of Judgment is extinguished as a matter of law. A judgment lien is entirely dependent on the judgment. “A lien ... cannot exist apart from the judgment upon which it is based. Thus, in the ordinary course of events when the judgment is vacated by court order the lien will also cease to exist, because the effect of a vacating order is eliminate the judgment. [Citation.] Once vacated, the status of the parties that existed prior to the judgment is restored and the situation then prevailing is the same as though the order or judgment had never been made. [Citation.]” *Bulmash v. Davis* (1979) 24 Cal.3d 691, 697 [157 Cal.Rptr. 66, 597 P.2d 469].)

Disposition

The Court finds and orders as follows:

1. The Motion to Set Aside Default Judgment is GRANTED.
2. The Judgment entered January 29, 2024 is hereby VACATED and SET ASIDE.
3. **Plaintiff shall, within thirty (30) days of notice of entry of this order, take all reasonable steps to prepare and record with the County Recorder a release of the Abstract of Judgment and any judgment lien thereunder, pursuant to Code of Civil Procedure section 697.400 and all applicable law. Thereafter, Plaintiff shall file and serve a Notice of Release of Lien.**
4. **Next CMC Date.** This matter is set for a further CMC on **August 22, 2025, 8:30 am**, in **Department 34** of the Court (the “Next CMC Date”).
5. **Follow Local Rules.** The parties are ordered to review and comply with all provisions of Local Rule 3.8 (Case Management Conference Procedures) in advance of the Next CMC Date.
6. The Court shall issue the order after hearing.

6. 9:00 AM CASE NUMBER: L23-05751

CASE NAME: CITIBANK, N.A. VS. PATRICIA TEOTONIO

*HEARING ON MOTION IN RE: MOTION TO VACATE DISMISSAL AND ENTER JUDGMENT

FILED BY: TEOTONIO, PATRICIA

TENTATIVE RULING:

Plaintiff Citibank, N.A. (“Plaintiff”) filed a Motion to Vacate Dismissal and Enter Judgment under Terms of Stipulated Settlement on May 2, 2025 (“Motion to Enter Stipulated Judgment after Default”). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement filed on or about December 4, 2023 (the “Settlement Agreement”), the terms of which included payment by the defendant Patricia Teotonio (“Defendant”) in the amount of \$4,151.37 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 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 \$1,902.37 due and owing plus costs of \$578.50, for a total judgment of \$2,480.87. 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 papers. **However, THE PARTIES ARE ORDERED TO APPEAR to confirm whether Defendant was duly served with the motion papers *which contained notice of the hearing information at the time of service or if separate notice of the hearing date was otherwise subsequently given.***
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 \$1,902.37 plus costs of \$578.50, for a total judgment of \$2,480.87.
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: L24-00783
CASE NAME: BANK OF AMERICA N.A. VS. FERNANDO GARCIA
*HEARING ON MOTION IN RE: MOTION 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 May 1, 2025 (the "Motion for Judgment on the Pleadings"). The Motion for Judgment on the Pleadings was set for hearing on July 1, 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 Fernando Guarne Garcia (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 (Open Book Account, Account Stated, Money Had and Received, Money Lent and Money Paid at Defendant’s Special Instance and Request) based on the allegation that Defendant became indebted in the amount of \$11,945.55. See Complaint filed February 1, 2024, p. 2, ¶¶8 and 10 and Attachments (1st Cause of Action).

Defendant’s Answer was filed April 19, 2024. The Answer denies the allegations of the Complaint and states various affirmative defenses. See Answer filed April 19, 2024.

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 May 2, 2025 (the “Deemed Admitted Order”). The Court takes judicial notice of the Deemed Admitted Order and the underlying court filings in 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, \$11,945.55. See Deemed Admitted Order; see also RFAs attached as Exhibit 1 to the Declaration of Robert Kayvon filed May 1, 2025 (the “Supporting Declaration”).

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.

The affirmative defenses are expressly negated by the admissions made as part of the Deemed Admitted Order. See RFA No. 10 (admission that “[Y]ou have no defense to plaintiff’s complaint.”), Supporting Declaration, Exhibit 1. The Court concludes that this and the other admissions made to the effect that the subject debt is due and owing constitutes 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, Account Stated and Money Lent. The Court need not consider the other alternative theories of liability (Money Had and Received, and Money Paid at Defendant's Special Instance and Request).
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.
3. Defendant became indebted in the amount of \$11,945.55, which amount is due and owing to Plaintiff.

Costs

The moving papers seek an award of recoverable costs in the sum of \$671.93, supported by the filed Memorandum of Costs.

Disposition

The Court finds and orders as follows:

1. The Court finds that Defendant was duly served with the motion papers. **However, THE PARTIES ARE ORDERED TO APPEAR to confirm whether Defendant was duly served with the motion papers *which contained notice of the hearing information at the time of service or if separate notice of the hearing date was otherwise subsequently given.***
2. The Motion for Judgment on the Pleadings is GRANTED.
3. A proposed form of order was lodged with the Court which the Court shall execute and enter.

8. 9:00 AM CASE NUMBER: L24-01279
CASE NAME: AUBRIE KNIGHTEN VS. LEONARD NORDIN
*HEARING ON MINOR'S COMPROMISE
FILED BY: KNIGHTEN, AUBRIE
TENTATIVE RULING:

Plaintiff Aubrie Knighten, by and through the duly appointed guardian ad litem herein, Alisha Knighten ("Plaintiff") filed a Petition to Approve Compromise of Disputed Claim (Minor) on or about April 16, 2025 (the "Minor's Compromise") seeking court approval of the compromise and proposed disposition set forth therein. See Code Civ. Proc. § 372 and Rule 7.950 *et seq.* of the California Rules of Court (CRC). The Minor's Compromise was set for hearing on July 1, 2025.

Analysis

The Minor's Compromise is unopposed.^[FN1] The Court has considered the verified Minor's Compromise and finds the proposed terms to be just and reasonable.

Disposition

The Court finds and rules as follows:

1. The Minor's Compromise is APPROVED.
2. The Court shall enter the proposed form of order lodged with the moving papers.
3. MOVING PARTY TO APPEAR to address completion of the designation of the blocked account for inclusion at Paragraph 8.a. (left blank in proposed form of order).

^[FN1] Although no proof of service appears of record, it appears that no prior notice to other parties is mandatory. See CJER, *California Judges Benchbook: Civil Proceedings—Before Trial* (2025) ("CJER Civ. Pro.—Before Trial"), § 5.45 (observing that neither the Code of Civil Procedure nor the CRC contemplate a noticed motion for approval of a minor's compromise and concluding that a judge "may decide a petition to approve or disapprove a minor's compromise on an ex parte basis, in chambers"). In any event, no party has sought to appear to oppose the Minor's Compromise.

9. 9:00 AM CASE NUMBER: L24-03589
CASE NAME: LANDMARK CREDIT UNION VS. SOFIA BAQAIN
***HEARING ON MOTION IN RE: MOTION TO BE RELIEVED AS COUNSEL**
FILED BY: LANDMARK CREDIT UNION
TENTATIVE RULING:

Attorneys Robert M. Aronson and Jeffrey A. Clark of the Law Office of Robert M. Aronson, P.C. ("Counsel") filed a Motion to be Relieved as Counsel on April 3, 2025 (the "Motion to be Relieved as Counsel"). The matter was set for hearing on July 1, 2025.

Background

Counsel seeks to be relieved as attorneys for plaintiff Landmark Credit Union ("Plaintiff"). However, a Substitution of Attorney–Civil was filed herein on May 29, 2025 whereby new counsel was substituted in for Plaintiff.

Analysis

The Motion to be Relieved as Counsel is moot in light of the recent substitution of attorneys.

Disposition

The Court finds and rules as follows:

1. The Motion to be Relieved as Counsel is DROPPED from calendar as MOOT.

10. 9:00 AM CASE NUMBER: L24-04701
CASE NAME: BANK OF AMERICA N.A. VS. DANIEL CEJA
*HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT
FILED BY: CEJA, DANIEL
TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Enforce Settlement on April 21, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about September 27, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant Daniel Ceja ("Defendant") in the amount of \$19,073.71 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Flint C. Zide filed April 21, 2025 ("Supporting Declaration"), ¶3 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 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶6 and **Exhibit 2** thereto. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶7.

After credit for amounts paid, there remains \$12,567.71 due and owing, plus costs of \$790.30. See Supporting Declaration, ¶¶6-7.

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 \$12,567.71, plus costs of \$790.30, for a total judgment of \$13,358.01.
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.

11. 9:00 AM CASE NUMBER: L24-06015
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ROMAN DANNUG
HEARING ON SUMMARY MOTION PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT OR IN THE
ALTERNATIVE SUMMARY ADJUDICATION; NOTICE OF MOTION
FILED BY: U.S. BANK NATIONAL ASSOCIATION
TENTATIVE RULING:

Plaintiff US Bank National Association ("Plaintiff") filed a Motion for Summary Judgment or, in the Alternative, Summary Adjudication on February 4, 2025 (the "MSJ"). The MSJ was set for hearing on July 1, 2025. Notice was duly given.

Background

Plaintiff contends that it is entitled to summary judgment as a matter of law because there is no trial issue of fact and it is entitled to summary adjudication of each of its causes of action, including Open Book Account and Account Stated, based on the contention that defendant Roman R Dannug ("Defendant") became indebted to Plaintiff for unpaid amounts in connection with a credit card account with Plaintiff. See MSJ filed February 4, 2025, Memorandum of Points and Authorities ("Plaintiff's MPA"), p. 1 *et seq.*

Plaintiff's MSJ is supported by the Separate Statement of Undisputed Material Facts filed February 4, 2025 ("Plaintiff's Separate Statement"). The Separate Statement sets forth the asserted undisputed material facts ("UMF") supporting Plaintiff's claims.

No opposition papers have been filed.

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 Transportation* (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.

First Cause of Action: Common Counts (Open Book Account)

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.

Plaintiff's evidence shows the existence of the account of the financial transactions between the parties, i.e. that Defendant established a credit card account with Plaintiff. See UMF Nos. 1-3. The terms and conditions of the account (the "Terms and Conditions") are set forth in the Cardmember Agreement. See UMF No. 2; see Plaintiff's Declaration filed February 4, 2025, ¶6 and **Exhibit A** thereto (U.S. Bank Platinum Visa® Card Agreement).

The evidence further shows that Plaintiff kept an account of the debits and credits involved in the transactions and rendered monthly credit card billing statements to the Defendant. See UMF No. 4.

Plaintiff has demonstrated that Defendant owes Plaintiff money on the account, i.e. for past due and unpaid credit card charges. Plaintiff proffered evidence of Defendant's breach due to the failure to make the payments due and owing on the credit card account pursuant to the Terms and Conditions. See UMF Nos. 6-7. Plaintiff's proffered evidence reflects Defendant owes Plaintiff the amount of \$5,285.82 for the unpaid principal past due and owing. UMF Nos. 8 and 9.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact.

Defendant has not filed any opposition. Defendant has failed to proffer admissible evidence sufficient to raise a triable issue of fact as to Defendant's indebtedness on the account. No evidence has been proffered raising a material dispute over the balance due and owing asserted by Plaintiff or any affirmative defense to such indebtedness.

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

Remaining Common Counts Pled under First Cause of Action

Plaintiff has also pled alternate forms of common counts under the First Cause of Action. See Complaint filed July 17, 2024 (First Cause of Action alleges the common counts of Account Stated, Goods Sold and Delivered and "Credit Extended" in addition to Open Book Account).

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.

In addition to the evidence discussed above, Plaintiff's evidence shows that Defendant never disputed the billings on the credit card account, implying an agreement and promise to pay the amount stated on the billing statements rendered. UMF No. 14.

For the reasons set forth above and otherwise based on the evidence proffered by Plaintiff in support of the undisputed material facts as to the cause of action for an Account Stated, the Court finds that Plaintiff has carried its burden of production to make a *prima facie* showing of the nonexistence of any triable issue of material fact as to the elements of an Account Stated.

Therefore, the burden shifts to the opposing party to make a *prima facie* showing of the existence of a triable issue of material fact as to that cause of action.

No opposition has been filed by Defendant raising a triable issue of fact as to the balance due and owing or otherwise raising a material dispute over the liability on the debt asserted by Plaintiff.

Accordingly, the Court finds that there is no triable issue of material fact as to Plaintiff's cause of action for Account Stated under the First Cause of Action, and that Plaintiff is entitled to judgment as a matter of law on those pled common counts.

The Court need not consider the alternate pled theories of Goods Sold and Delivered or "Credit Extended."

Costs

Plaintiff seeks an award of \$297.61 for recoverable court costs. The moving papers included Memorandum of Costs which reflects costs totaling \$297.61 (the "Memo of

Costs”). The Memo of Costs makes reference to “Attachment expenses” of \$72.61. It is not clear to the Court the basis for this cost item or whether such item was reasonable and necessary to the conduct of the litigation. It does not appear that such cost item is supported by any further submitted declaration or explanation. The Court is prepared to enter a judgment including the remaining \$225.00 in costs.

Disposition

The Court finds and orders as follows:

1. The MSJ is GRANTED.
2. Plaintiff’s submitted form of order and/or money judgment against Defendant will be entered by the Court. However, \$225.00 in costs are awarded at this time. In the alternative, Plaintiff may appear and be sworn on the question of inclusion of the further \$72.61 cost item.

12. 9:00 AM CASE NUMBER: L24-07326
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. ROBERT MOMONO
***HEARING ON MOTION IN RE: MOTION TO ENTER JUDGMENT PURSUANT TO STIPULATION**
FILED BY: MOMONO, ROBERT F
TENTATIVE RULING:

Plaintiff JPMorgan Chase Bank, N.A. (“Plaintiff”) filed a Motion to Enter Judgment Pursuant to Stipulation on April 25, 2025 (“Motion to Enter Stipulated Judgment after Default”). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about September 19, 2024 (the “Settlement Agreement”), the terms of which included payment by the defendant Robert F Momono (“Defendant”) in the amount of \$13,939.72, to be paid in accordance with the terms thereof (the “Payment Terms and Conditions”). See Declaration of Counsel filed April 25, 2025 as part of Motion to Enter Stipulated Judgment after Default (“Supporting Declaration”), ¶2 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 A**, ¶¶1-4 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶¶6-7. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶¶4 and 7.

After credit for amounts paid, there remains \$12,259.72 due and owing. See Supporting Declaration, ¶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 \$12,259.72.
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.

13. 9:00 AM CASE NUMBER: L25-04292
CASE NAME: ANANTA KANDEL VS. CITY OF PITTSBURG, CALIFORNIA, CODE ENFORCEMENT DIVISION
HEARING IN RE: PETITION FOR JUDICIAL REVIEW OF FINAL ADMINISTRATIVE ORDER
FILED BY:
TENTATIVE RULING:

Petitioner Ananta Sharma Kandel ("Petitioner") filed a Petition for Judicial Review of Final Administrative Order on May 2, 2025 ("Petition re Appeal of Administrative Decision") seeking a hearing de novo, pursuant to Government Code section 53069.4, from the Decision issued April 14, 2025 of the hearing officer regarding the underlying administration decision and/or action by the City of Pittsburg, Code Enforcement Division, Hearing/Case No. CE 24-175489 (the "Administrative Decision"). A hearing on the Petition re Appeal of Administrative Decision was set for July 1, 2025.

Background

Government Code 53069.4, subsection (b)(1), provides for a process for a *de novo* review of a final administrative order or decision of a local agency regarding the imposition, enforcement, or collection of administrative fines or penalties subject to the statute.

Disposition

The Court finds and orders as follows:

1. PARTIES TO APPEAR to discuss the status of the Petition re Appeal of Administrative Decision and case management related to the hearing of the matter, including but not limited to, the scheduling of a short cause evidentiary hearing de novo on the Petition re Appeal of Administrative Decision pursuant to Government Code section 53069.4.

14. 9:00 AM CASE NUMBER: MSC24-0710
CASE NAME: ABEL EVERSON VS. YUNHUI LIU
*HEARING ON MOTION IN RE: SET AT JUNE 5, 2025 HEARING
FILED BY:
TENTATIVE RULING:

Defendant Yunhui Liu ("Ms. Liu") filed a Motion to Dismiss Plaintiff's Claims with Prejudice on June 5, 2025 ("Motion to Dismiss"). The Motion to Dismiss was set for hearing on July 1, 2025. See Order filed June 16, 2025, ¶8.

Background

This is a small claims matter. The original Plaintiff's Claim was filed December 9, 2024. The plaintiff is Abel Everson ("Mr. Everson"). Mr. Everson's Claim named two defendants, Good Fortune Group LLC ("GFG") and an individual, Ms. Liu. Each of the defendants GFG and Ms. Liu filed their own separate counterclaim on April 25, 2025 (the "Counterclaims"). After an initial court hearing on June 5, 2025, all claims by GFG were dismissed. Moreover, Mr. Everson's claim against GFG was also dismissed. See Order filed June 16, 2025. Mr. Everson's Claim against Ms. Liu and Ms. Liu's Claim against Mr. Everson are currently set for court trial on July 10, 2025, 1:30 pm, in Department 34 of the Court. *Id.*

While the court resolved a number of pending motions at the prior June 5, 2025 hearing, the Court specially set Ms. Liu's Motion to Dismiss for hearing on the Court's regular Law and Motion calendar:

- 8. Ms. Liu's Motion to Dismiss.** The Court considered a Motion to Dismiss by Ms. Liu which Ms. Liu presented during the hearing and sought to have heard. The Court permitted her to file it and a copy was served in open court on Mr. Everson ("Ms. Liu's Motion to Dismiss"). The Court set a hearing date on Ms. Liu's Motion to Dismiss for **July 1, 2025 at 9:00 am** on the Court's regular Law & Motion calendar in Department 34. All parties concurred that Ms. Liu's Motion to Dismiss was moot as relates to GFG and the issue of service on Ms. Liu, both matters which were resolved at today's hearing. Any other matters raised by the motion will be heard and considered by the Court. The parties are ordered to comply with the Court's tentative ruling procedures on noticed motions and were given a copy of the Court's FAQ regarding such procedures.

See Order filed June 16, 2025, ¶8. Mr. Everson was duly served with the Motion to Dismiss, as stated in the Court's prior order.

No Opposition has been filed to date.

Ms. Liu filed a "Supplemental Legal Authorities And Argument" on June 26, 2025 (the "Supplemental Brief"). While arguably untimely, the Court has, in its discretion, considered the paper.

Analysis

Moot Issues

As noted in the Court's prior order, as set forth above, the arguments regarding service in the Motion to Dismiss are moot and are not considered by the Court.

Moreover, the arguments raised regarding whether GFG was a proper defendant are also moot and are not considered by the Court.

Retaliation and Harassment

Ms. Liu's Motion to Dismiss next raises arguments to the effect that "case was filed as an act of retaliation and harassment," etc.

No authority is cited for the proposition that a court hearing a small claims matter may dismiss a plaintiff's claim by a pre-hearing motion because of an assertion that the claim is brought as "harassment" or "retaliation."

Whether that is true or not may certainly bear on the merits or credibility of the witnesses, including Mr. Everson, at the hearing on the small claims matter. However, the Court does not find any basis to grant a pre-hearing motion to dismiss a small claims matter for such reasons.

And even if such contentions were grounds to dismiss a small claims matter pre-hearing, the motion lacks evidentiary support, as it is unsupported by any declaration(s) submitted under penalty of perjury.

Claim Preclusion and Issue Preclusion

The Supplemental Brief argues that the Court should also dismiss Mr. Everson's Claim against Ms. Liu based on claim preclusion and issue preclusion because "This case is a prohibited attempt to re-litigate allegations already decided in a prior civil harassment restraining order proceeding."

Setting aside the dubious procedural posture of the Motion to Dismiss and whether such contentions can or should be considered by the Court by way of the present pre-hearing motion to dismiss, it is clear that the arguments lack merit.

First, as with the other contentions discussed above, the motion lacks evidentiary support, as it is unsupported by any declaration(s) submitted under penalty of perjury (other than as relates to service of the paper).

Second, even if the Court were to consider the factual assertions made about a prior civil harassment restraining order proceeding between the parties and the documents attached to the Supplemental Brief, the Court does not conclude that Mr. Everson's Claim against Ms. Liu is somehow barred by the doctrines of claim preclusion and/or issue preclusion.

The only issue finally decided in the prior restraining order proceedings appears to be whether there were grounds for the issuance of a civil harassment restraining order as relates to Ms. Liu's request for a restraining order against Mr. Everson. See Minute Order dated September 10, 2024. That request was denied. *Id.*

While the parties may have testified at length about matters that bear on the landlord-tenant relationship and Mr. Everson's assertions about harassment having been

perpetrated against him, the Court made no findings on such matters and certainly issued no specific findings of fact or determinations about allegations of harassment against him. Nor did the Court make findings on the validity of any purported eviction. Indeed, it appears that the unlawful eviction is alleged to have occurred (9/28/2024) after the Court hearing on the civil harassment restraining order (9/10/2024).

Other Grounds

Plaintiff's reference to and arguments based on "Anti-SLAPP Principles" are frivolous. The Court does not conclude that this or any of the other arguments raised by Ms. Liu supports dismissal of Mr. Everson's Claim.

If Mr. Everson made prior inconsistent statements about relevant matters in the civil harassment restraining order proceeding, Ms. Liu can raise such matters at the hearing on Mr. Everson's Claim. And, of course, she can present any relevant evidence she wishes at the hearing on Mr. Everson's Claim for the Court's consideration.

Disposition

The Court finds and orders as follows:

1. The Motion to Dismiss is DENIED.

15. 9:00 AM CASE NUMBER: MSL18-07053
CASE NAME: BANK OF AMERICA VS. TOVAFLORES
***HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT**
FILED BY: TOVAFLORES, BENJAMIN WILFREDO
TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Enforce Settlement on April 21, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about February 21, 2019 (the "Settlement Agreement"), the terms of which included payment by the defendant Benjamin Wilfredo Tovarflores ("Defendant") in the amount of \$6,010.85 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Flint C. Zide filed April 21, 2025 ("Supporting Declaration"), ¶¶3-5 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 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶16. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶17.

After credit for amounts paid, there remains \$3,950.35 due and owing, plus costs of

\$579.50. See Supporting Declaration, ¶¶7-9.

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 \$3,950.35, plus costs of \$579.50, for a total judgment of \$4,529.85.
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.

16. 9:00 AM CASE NUMBER: MSL21-03881

CASE NAME: BANK OF AMERICA VS GUERRA-CARRILLO

***HEARING ON MOTION IN RE: MOTION TO ENFORCE SETTLEMENT PURSUANT TO CCP 664.6**

FILED BY:

TENTATIVE RULING:

Plaintiff Bank of America, N.A. ("Plaintiff") filed a Motion to Enforce Settlement on April 14, 2025 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on July 1, 2025.

Background

The parties entered into that certain settlement agreement on or about December 27, 2022 (the "Settlement Agreement"), the terms of which included payment by the defendant Edwin Arnoldo Guerra-Carrillo ("Defendant") in the amount of \$5,756.36 (\$5,916.32 less credits of \$159.96) plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Flint C. Zide filed April 14, 2025 ("Supporting Declaration"), ¶¶3-5 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 and 7.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶16. No notice or opportunity to cure is required under Settlement Agreement. Settlement Agreement, ¶7.

After credit for amounts paid, there remains \$5,756.36 due and owing, plus costs of \$373.50. See Supporting Declaration, ¶¶7-9. By the Court's calculation, the total

judgment amount is \$6,189.86. *Id.*

However, the submitted request seeks a total judgment of \$6,349.82. That amount fails to account for the \$159.96 “credits” to be applied per the Settlement Agreement. See Supporting Declaration, ¶7.

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 \$5,756.36, plus costs of \$433.50 (\$373.50 plus \$60.00), for a total judgment of \$6,189.86.
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.