SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 34, RICHMOND
JUDICIAL OFFICER: LEONARD E MARQUEZ
HEARING DATE: 07/08/2025

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: L22-05292
CASE NAME: DISCOVER BANK VS. CINDY HURTADO
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE SETTLEMENT & ENTER JUDGMENT PURSUANT TO STIP**
FILED BY:
TENTATIVE RULING:

See Order – Recusal entered July 2, 2025.

2. 9:00 AM CASE NUMBER: L24-00731
CASE NAME: DISCOVER BANK VS. DAVID HART
***HEARING ON MOTION IN RE: MOTION TO SET ASIDE SETTLEMENT & ENTER JUDGMENT PURSUANT TO STIP**

FILED BY: HART, DAVID
TENTATIVE RULING:

Plaintiff Discover Bank ("Plaintiff") filed a Motion to (1) Set Aside Notice of Settlement and (2) Enter Judgment Pursuant to Stipulation 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 8, 2025.

Background

The parties entered into that certain settlement agreement on or about July 26, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant David Hart ("Defendant") in the amount of $1,925.61 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Counsel 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,** ¶¶1-3, 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 and 7.

After credit for amounts paid, there remains $1,265.61 due and owing, plus costs of $296.02. 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 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. Subject to Paragraph 1 above, the Motion to Enter Stipulated Judgment after Default is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $1,265.61, plus costs of $296.02, for a total judgment of $1,561.63.
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.

3. 9:00 AM CASE NUMBER: L24-03881
CASE NAME: JPMORGAN CHASE BANK, N.A. VS. GLADIS CUBAS
***HEARING ON MOTION IN RE: MOTION TO ENTER JUDGMENT PURSUANT TO STIP FILED BY PLAINTIFF ON 12/31/24**
FILED BY:
TENTATIVE RULING:

Plaintiff JPMorgan Chase Bank, N.A. ("Plaintiff") filed a Motion to Enter Judgment Pursuant to Stipulation on December 31, 2024 ("Motion to Enter Stipulated Judgment after Default"). The Motion to Enter Stipulated Judgment after Default was set for hearing on June 2, 2025. Thereafter, the motion was reset for hearing on June 10, 2025.

However, it appeared the Court's notice of the reset hearing date was only served upon the moving party. Accordingly, the matter was continued to July 8, 2025, 9:00 a.m. in Department 34 of the Court to ensure that notice of the hearing has properly been given to the Defendant. Plaintiff was ordered to give notice of the new hearing date to Defendant.

No further filling appears of record reflecting such notice of the new hearing date having been given to Defendant.

Disposition

The Court finds and orders as follows:

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

4. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING IN RE: MOTION TO STRIKE
FILED BY:
TENTATIVE RULING:

Plaintiff US Bank National Association ("Plaintiff") and defendant Alexander De La Campa ("Defendant") have filed a number of motions and related matters, all of which have been set for hearing on July 8, 2025. The motions/matters are as follows:

1. Motion to Compel Discovery filed May 12, 2025 by Defendant (the "Motion to Compel");

2. Motion to Strike Plaintiff Declaration Submitted as Responses to Discovery filed May 12, 2025 by Defendant (the "Motion to Strike Plaintiff's Declaration Submitted as Responses to Discovery");

3. Motion to Compel Verification of plaintiff's standing and real party in interest status filed May 12, 2025 by Defendant (the "Motion to Compel Verification");

4. Motion to Amend the Record filed April 16, 2025 by Defendant (the "Motion to Amend the Record");

5. Motion to Strike Plaintiff's Declaration in Support of Motion for Summary Judgment filed April 16, 2025 by Defendant (the "Motion to Strike Plaintiff's Declaration");

6. Request for Judicial Notice filed April 16, 2025 by Defendant ("Defendant's RJN");

7. Request for Judicial Notice filed February 21, 2025 by Plaintiff ("Plaintiff's RJN"); and

8. Motion for Summary Judgment or in the Alternative Summary Adjudication filed February 21, 2025 by Plaintiff (the "MSJ").

Each of these motions/matters is addressed in turn below.

1. Motion to Compel

Defendant's Motion to Compel appears to be a motion to compel further discovery responses by Plaintiff with respect to certain "Requests for Production of Documents, interrogatories, and admissions" served on or about February 12, 2025 (the "Defendant's Discovery Requests").

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. On the other hand, the Court is empowered to limit the scope of discovery where the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. Code Civ. Proc. § 2017.020(a). Moreover, the moving party and proponent of the discovery on a motion to compel further responses to a request for production of documents must set forth specific facts showing good cause justifying the discovery sought by the demand. Code Civ. Proc. § 2031.310(b)(1).

Defendant's Motion to Compel is procedurally defective. The moving party failed to file a Separate Statement conforming to the requirements of Rule 3.1345 of the California Rules of Court ("CRC"). See CRC Rule 3.1345(c) ("A separate statement is a separate document filed and served with the discovery motion that provides all the information necessary to understand each discovery request and all the responses to it that are at issue. The separate statement **must be full and complete so that no person is required to review any other document in order to determine the full request and the full response**.") (emphasis added); see also CRC 5.12. Among other things, a proper Separate Statement must set forth the full text of both the request and response. *Id*. at (c)(1)-(2). Attaching a meet and confer email or other correspondence to a motion does not satisfy this

requirement.

Accordingly, the Motion to Compel is DENIED.

2. Motion to Strike Plaintiff's Declaration Submitted as Responses to Discovery

Defendant's Motion to Strike Plaintiff's Declaration Submitted as Responses to Discovery refers to a "declaration in response to Defendant's discovery requests." See Motion to Strike Plaintiff's Declaration Submitted as Responses to Discovery, p. 2.

It is not clear to the Court what "declaration" is at issue in Defendant's motion. Nowhere in the moving paper is there a citation to a supporting declaration attaching a copy of such "declaration."

While confusing, it appears, in context, that the motion is referring to something produced in discovery by Plaintiff. It appears that Defendant seeks to argue about the validity of some "improperly verified" document.

To the extent that the motion raises some supposed defect in Plaintiff's discovery responses, the motion is procedurally defective for the same reasons discussed above in connection with Defendant's Motion to Compel.

Accordingly, the Motion to Strike Plaintiff's Declaration Submitted as Responses to Discovery is DENIED.

3. Motion to Compel Verification

Defendant's Motion to Compel Verification seeks an order from the Court compelling Plaintiff "to verify that it is the real party in interest in this action, and that the name of U.S. BANK NATIONAL ASSOCIATION d/b/a ELAN FINANCIAL SERVICES is not being used improperly or without authorization by a third party debt collector." See Motion to Compel Verification, p. 2.

Defendant fails to demonstrate any basis under the law for such an order and the Court is aware of none. To the extent Defendant seeks to challenge whether the Plaintiff can show that it is the real party in interest or show Plaintiff is somehow not authorized to pursue the causes of action alleged, Defendant is certainly free to do so—whether in the context of the pending MSJ or at trial. However, the Court does not find any basis to issue the type of order requested by this motion.

The motion makes vague references to other matters that may be affirmative defenses at trial but are not grounds for the relief requested. Among other things, the reference to the assertion of a lack of legal capacity to sue, pursuant to Code of Civil Procedure section 430.10(b), is unavailing. That issue may be raised by a defendant's answer or by demurrer. Code Civ. Proc. § 430.10; see CJER, *California Judges Benchbook: Civil Proceedings—Before Trial* (2025) ("CJER Civ. Pro.—Before Trial"), § 10.13. This is not a demurrer and the time to file a demurrer has long since passed.

Accordingly, the Motion to Compel Verification is DENIED.

4. Motion to Amend the Record

Defendant's Motion to Amend the Record seeks an order "[t]he Defendant did not appear personally at the Case Management Conference" and "[a] special appearance was made on behalf of the Defendant by the Defendant's attorney-in-fact, who appeared solely for purposes of procedural matters and not as a general appearance."

The Case Management Conference (CMC) that is the subject of the motion was held on October 11, 2024. The Court's Minute Order reflects Defendant's attendance at the CMC. See Minute Order dated October 11, 2024. Specifically, the Minute Order recites:

> Counsel Tracy Tumlin for plaintiff appears via ZOOM
> Defendant Alexander De La Campa appears via ZOOM

Id.

Notwithstanding the supposed significance that Defendant seeks to attribute to labels such as "attorney-in-fact," "special appearance," "for purposes of procedural matters" and "general appearance," he was present for and participated in the court hearing—as his own motion plainly concedes.[FN1] The Court's record accurately reflect such attendance.

This motion is without substantial justification in fact or the law. It appears that Defendant's motion is engaging in gamesmanship regarding meaningless semantics. Defendant is hereby admonished for bringing this frivolous motion.

Accordingly, the Motion to Amend is DENIED.

5. Motion to Strike Plaintiff's Declaration

Defendant's Motion to Strike Plaintiff's Declaration filed in support of Plaintiff's MSJ

"on the grounds the Plaintiff failed to disclose this declaration in response to the Defendants request for discovery," citing "Federal Rules of Civil procedure Rule 37." See Motion to Strike Plaintiff's Declaration, p. 1.

The cited Rule 37 of the Federal Rules of Civil Procedure has no applicability to this action. Civil discovery in California is governed by the Civil Discovery Act. Code Civ. Proc. § 2016.010 *et seq*.; see CJER, *California Judges Benchbook: Civil Proceedings—Discovery* (2024) ("CJER Civ. Pro. —Discovery"), § 1.

Accordingly, the Motion to Strike Plaintiff's Declaration is DENIED.

6. Defendant's RJN

Defendant's RJN requests that the Court take judicial notice of certain referenced federal and state laws, as well as what is described as supporting caselaw (JN7). Defendant's RJN is GRANTED IN PART and DENIED IN PART.

Defendant's RJN is GRANTED, except as to JN7. The request is DENIED as to JN7. JN7 appears to be a compilation of excerpts from and summaries of various case authorities, as opposed to full copies of case authorities. Accordingly, it is in the nature of a briefing

paper and the Court declines to take judicial notice of it.

7. Plaintiff's RJN

Plaintiff's RJN requests that the Court take judicial notice of certain referenced federal laws and regulations. Plaintiff's RJN is GRANTED.

8. MSJ

Finally, the Court considers Plaintiff's MSJ. The MSJ was set for hearing on July 8, 2025 in Department 34 of the Court. Notice was given to the parties.

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 Common Counts, based on the contention that Defendant became indebted to Plaintiff for unpaid amounts in connection with credit extended to Defendant in connection with a credit card account. See Memorandum of Points and Authorities filed February 21, 2025 ("Plaintiff's MPA"), p. 1 *et seq*.

Plaintiff's MSJ is supported by the Separate Statement of Undisputed Material Facts filed February 21, 2025 (Plaintiff's "Separate Statement"). The Separate Statement sets forth the asserted undisputed material facts ("UMF") supporting Plaintiff's claims.

Opposition papers have been filed and considered by the Court.

Analysis

The procedure by which a party may seek pretrial entry of judgment on the ground that there is no dispute of material fact is summary judgment or, when the request is for a dispositive ruling on one of multiple claims within an action, summary adjudication. Code Civ. Proc. § 437c; Rule 3.1350 of the California Rules of Court (CRC); see *Weiss v. People ex rel. Dept. of Transport*ation (2020) 9 Cal.5th 840, 864; see generally CJER, *California Judges Benchbook: Civil Proceedings before Trial* (2022) ("CJER Civ. Proc. before Trial"), § 13.2 *et seq*. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. Code Civ. Proc. § 437c(f)(1).

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

The party moving or summary judgment bears the burden of persuasion that there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; see CJER Civ. Proc. before Trial,

§ 13.60. There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof. *Id*. A plaintiff bears the burden of persuasion that each element of the cause of action in question has been proved, and hence that there is no defense thereto. *Id*. A defendant bears the burden of persuasion that one or more elements of the cause of action in question cannot be established, or that there is a complete defense thereto. *Id*.

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

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 21, 2025 ("Plaintiff's Decl."), ¶6 and **Exhibit A** thereto (Umpqua Bank Visa® Platinum 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 $13,306.32 for the unpaid principal past due and owing. UMF Nos. 8.

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 filed an opposition "Response" paper. See Defendant's Response Opposing Motion for Summary Judgement or in the Alternative Summary Adjudication filed April 16, 2025 ("Defendant's Opposition"). The Court has read and consider the other opposing papers filed as well, including Defendant's Responses to Plaintiff's Statement of Undisputed Material Facts filed April 16, 2025 ("Defendant's Response to Plaintiff's

UMFs").

As an initial matter, Defendant failed to timely serve his Defendant's Opposition and accompanying papers (as discussed further below). See Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Summary Judgment. For that reason alone, the Court would conclude that Defendant has failed to make a prima facie showing of the existence of a triable issue of material fact.

However, even if the Court were to consider the opposition papers, it would come to the same conclusion.

Among other things, Defendant argues that "[t]o date, the Plaintiff has produced no evidence showing that the alleged debt is accurate, open, unpaid, or in default." See Opposition, p. 2. Defendant is mistaken. As discussed at length, Plaintiff's moving papers included admissible evidence supporting the elements of Plaintiff's cause of action, including by way of a declaration under penalty of perjury executed by Plaintiff's custodian of records familiar with the Plaintiff's books and records regarding the subject account and debt. See Plaintiff's Decl., ¶3.

The Court has considered and rejects the various procedural issues raised by Defendant, many of which are based on assertions regarding inapplicable state and federal law.

Defendant's claim that Plaintiff is not the real party in interest has been considered and is rejected. Plaintiff has proffered evidence of the named Plaintiff's ownership of the debt at issue. See UMF Nos. 1 and 2.

Importantly, Defendant has not proffered any admissible evidence sufficient to establish a *prima facie* showing of the existence of a triable issue of material fact as to that issue.

Defendant's Opposition is arguably not a proper form of declaration and/or contains improper argument, being a mixture of arguments, legal citation and apparent factual assertions. The final page contains something akin to a statement that the paper is signed under penalty of perjury. See Opposition, p. 9 ("I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct the the best of my knowledge and abilities.").

Nonetheless, viewed in the light most favorable to Defendant and even assuming that the statements in the Opposition are all made under penalty of perjury such that they may constitute admissible evidence, the Court does not conclude that Defendant has offered any evidence sufficient to raise a triable issue of fact on the question of Plaintiff's ownership of the debt sued upon.

While the papers contain multiple statements amounting to arguments about whether Plaintiff "validated" the debt and whether Plaintiff is the "person entitled to enforce" the debt and various iterations of those arguments, Defendant fails to state any specific factual assertions vis-à-vis the ownership of the debt that would a triable issue.

Nowhere does Defendant state that he did not enter the Cardmember Agreement with Plaintiff. Defendant's convoluted observations about the supposed relationships between

the various "entities" on the other side of the case are not tantamount to such a factual assertion. Nor are conclusory arguments about the asserted failures to render proof or to comply with supposed discovery obligations—many of which are plainly misguided on their face—sufficient to raise a triable issue of fact either.

As Plaintiff's Reply points out, the courts have observed that cryptic speculation and broadly phrased conclusory assertions are not enough:

> An issue of fact can only be created by a conflict of evidence. It is not created by 'speculation, conjecture, imagination or guess work.' ... Further, an issue of fact is not raised by 'cryptic, broadly phrased, and conclusory assertions' ... , or mere possibilities..."

Yuzon v. Collins (2004) 116 Cal.App.4th 149, 166, quoting *Sinai Memorial Chapel v. Dudler* (1991) 231 Cal. App. 3d 190, 196–197.

The same thing is true with respect to the other elements of Plaintiff's cause of action. As discussed above, Plaintiff has proffered admissible evidence as to each element. Defendant has failed to offer any admissible evidence sufficient to establish a *prima facie* showing of the existence of a triable issue of material fact as to the balance of those elements.

No where does Defendant state that he did not make the charges on the subject Umpqua Bank Visa® Platinum Card.

No where does Defendant state that he paid some or all of the subject alleged unpaid charges on the subject Umpqua Bank Visa® Platinum Card.

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.

In making the foregoing findings, the Court has considered Defendant's Response to Plaintiff's UMFs. Also, while Defendant purports to "object" to Plaintiff's assert UMFs, those objections are without merit and are DENIED. See e.g. Defendant's Response to Plaintiff's UMFs, p. 1 ("Defendant objects to this purported material fact..."). Evidentiary objections are not imposed as to UMFs, but rather as to specific evidence. No objections to evidence in proper form has been filed by Defendant.

In making the foregoing findings, the Court has considered Defendant's Evidence in Support of Response in Opposition to Plaintiffs Motion for Summary Judgement or in the Alternative Summary Adjudication filed April 16, 2015, constituting of Exhibits 1 through 18 ("Defendant's Exhibits").

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 12, 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.

For the reasons set forth above, the Court concludes that Defendant has not proffered substantial evidence sufficient to raise 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 on an Account Stated theory of recovery.

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.

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

<u>Costs</u>

Plaintiff seeks an award of $951.61 for recoverable court costs. The moving papers included a Memorandum of Costs which reflects costs totaling $951.61 (the "Memo of Costs"). The Court finds that each cost item therein was reasonable and necessary to the conduct of the litigation. Plaintiff shall recover $951.61 in costs as part of the judgment.

<u>Disposition</u>

The Court finds and orders as follows:

1. The MSJ is GRANTED. Plaintiff shall have judgment against Defendant in the principal amount of $13,306.32, plus costs of $951.61, for a total judgment of

$14,257.93.

2. Plaintiff's submitted form of order and money judgment against Defendant will be entered by the Court.

[FN1] Defendant states "the Defendant's attorney-in-fact made a special appearance," admitting he was present at the proceeding, regardless of any argument about what supposed capacity he appeared in.

5. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING IN RE: MOTION TO COMPEL DISCOVERY
FILED BY:
TENTATIVE RULING:

SEE LINE 4 ABOVE.

6. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING IN RE: MOTION TO COMPEL VERIFICATION
FILED BY:
TENTATIVE RULING:

SEE LINE 4 ABOVE.

7. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING IN RE: MOTION TO AMEND THE RECORD
FILED BY:
TENTATIVE RULING:

SEE LINE 4 ABOVE.

8. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING ON SUMMARY MOTION FILED BY PLN ON 2/21/24
FILED BY: U.S. BANK NATIONAL ASSOCIATION
TENTATIVE RULING:

SEE LINE 4 ABOVE.

9. 9:00 AM CASE NUMBER: L24-05841
CASE NAME: U.S. BANK NATIONAL ASSOCIATION VS. ALEXANDER DE LA CAMPA
HEARING IN RE: MOTION TO STRIKE DECLARATION
FILED BY:
TENTATIVE RULING:

SEE LINE 4 ABOVE.

10. 9:00 AM CASE NUMBER: L24-06233
CASE NAME: DISCOVER BANK VS. ISSA HAKIZIMANA, SR.
***HEARING ON MOTION IN RE: MOTION TO ENTER JUDGMENT PURSUANT TO STIPULATION**
FILED BY: HAKIZIMANA, ISSA, SR.
TENTATIVE RULING:

Plaintiff Discover Bank ("Plaintiff") filed a Motion to Enter Judgment Pursuant to Stipulation 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 8, 2025.

Background

The parties entered into that certain settlement agreement on or about August 16, 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant Issa Hakizimana, Sr. ("Defendant") in the amount of $5,456.44 plus costs, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Counsel filed 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 1, ¶¶**1-5.

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 and 7.

After credit for amounts paid, there remains $5,001.44 due and owing, plus costs of $225.00. See Supporting Declaration, ¶¶9-10.

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 $5,001.44, plus costs of $225.00, for a total judgment of $5,226.44.
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: L24-06442
CASE NAME: PEOPLEREADY, INC., VS. BRIAN BUYS BAY AREA HOMES LLC
***HEARING ON MOTION IN RE: MOTION FOR ENTRY OF JUDGMENT PURSUANT TO STIP**
FILED BY: BRIAN BUYS BAY AREA HOMES LLC
TENTATIVE RULING:

Plaintiff PeopleReady, Inc. ("Plaintiff") filed a Motion for Entry of Judgment Pursuant to Stipulation 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 8, 2025.

Background

The parties entered into that certain settlement agreement in or about November 2024 (the "Settlement Agreement"), the terms of which included payment by the defendant Brian Buys Bay Area Homes LLC ("Defendant") in the amount of $15,101.58, to be paid in accordance with the terms thereof (the "Payment Terms and Conditions"). See Declaration of Counsel filed as part of the Motion to Enter Stipulated Judgment after Default ("Supporting Declaration"), ¶6 and **Exhibit A** 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,** ¶¶4-5.

Defendant defaulted on the Payment Terms and Conditions. See Supporting Declaration, ¶7. Defendant failed to cure after notice. *Id*. at ¶8 and **Exhibit B** thereto. However, no information is provided regarding the method of transmission of such notice. *Id*. Notice appears to have been mailed.

After credit for amounts paid, there remains $15,101.58 due and owing, plus interest of 994.03 and costs of $530.79. See Supporting Declaration, ¶10.

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. PARTIES TO APPEAR to address sufficiency of notice of default given. There does not appear to be notice via email as contemplated by the Settlement Agreement. See Settlement Agreement, ¶4.

12. 9:00 AM CASE NUMBER: L24-06910
CASE NAME: CITIBANK N.A. VS. PAUL SHANKS
***HEARING ON MOTION FOR DISCOVERY FOR ORDER THAT MATTERS IN REQUEST FOR ADMISSION OF TRUTH OF FACTS BE DEEMED 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 February 14, 2025 (the "Motion to Deem Admissions"). The Motion to Deem Admissions was set for hearing on July 8, 2025. The motion is unopposed.

Background

Plaintiff served Defendant Paul W Shanks ("Defendant") with a Requests for Admission (Set One). See Declaration of Alexander Balzer Carr filed February 14, 2025 as part of Motion to Deem Admissions("Supporting Declaration"), ¶2 and **Exhibit 1** thereto (the "RFAs"). The RFAs were served on September 25, 2024 by mail. *Id*. at ¶2 and **Exhibit 1** [attached Proof of Service dated September 25, 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 30, 2025 (30 days from and after September 25, 2024 was October 25, 2024 and five calendar days thereafter fell on October 30, 2025). No responses were received by that deadline. See *id*. at ¶3. Despite meet and confer efforts, no responses were received through the time of the filing of the motion. See *id*. at ¶4.

Analysis

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

Where a party to whom requests for admission are directed fails to serve a timely

response, the propounding party may seek a court order that the genuineness of any documents and/or the truth of any matters specified in the requests be deemed admitted pursuant to Code of Civil Procedure section 2033.280. See Code Civ. Proc. § 2033.280(b). The propounding party may also seek the imposition of monetary sanctions. *Id*. 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. 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. Subject to Paragraph 1 above, the Motion to Deem Admissions is GRANTED.
3. The truth of the facts recited in RFA Nos. 1 through 5 are DEEMED ADMITTED by Defendant.
4. A proposed form of order was lodged with the Court which the Court shall execute and enter.