

## TENTATIVE RULING

On October 12, 2023, Bank of America, N.A. (plaintiff), filed a limited civil complaint against David Joseph Snyder (defendant), stemming from a credit card account. The account was established on August 24, 2021, and defendant's last payment was July 22, 2022. Defendant owed \$2,488.66. Before an answer was filed, the parties entered into a "Stipulation Agreement," filed with the court on January 20, 2024. The parties agreed that defendant owed \$2,488.66; and that defendant would pay \$55 before the 10th day of each month, starting January 10, 2024, through February 10, 2028, with a final payment of \$52.56 on or before March 10, 2028. It was agreed that if defendant made 24 or 51 payments, totaling \$1,300, plaintiff would deduct the remaining payments (\$1,482.56) from the balance. If defendant did not make these payments, the overall amount would not be reduced. The parties requested the court retain jurisdiction pursuant to Code of Civil Procedure<sup>1</sup> section 664.6 should the case be dismissed. The parties expressly agreed that in the event of a default, the court upon motion would vacate any dismissal, and enter judgment amount plus any motion and/or order fees required by the court, minus credit for payments made. The court dismissed the action on February 1, 2024, subject to section 664.6.

On February 5, 2026, plaintiff filed a motion for order setting aside and vacating the dismissal and for entry of judgment per the "Stipulated Agreement." Defendant was served with the motion on February 5, 2026. According to the declaration of attorney Michael Mallonga, defendant defaulted, making the last payment on April 8, 2024. Attached to the declaration is a copy of an electronic ledger outlining defendant's payment schedule. According to the schedule, defendant made payments totaling \$210. Plaintiff asks the court to vacate dismissal and enter judgment in the amount of the principal debt \$2,488.66, as well as previous court costs of \$313.30, a \$11.90 e-filing fee, a \$225 "order fee" (i.e., for the stipulation and order), and \$60 for the present motion (total of \$610.20 in costs), minus \$210 for payments made by defendant, for a total judgment of \$2,889.46. No opposition has been submitted as of this writing, which would be untimely in any event.

Before addressing the merits, some background legal principles are relevant to help frame the inquiry. Section 664.6 provides a summary procedure for entering judgment under the terms of a settlement agreement. (*Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *In re The Clergy Cases I* (2010) 188 Cal.App.4th 1224, 1236.) Pursuant to this provision, when the parties stipulate to settle pending litigation, the trial court may enter judgment pursuant to the terms of the settlement after dismissal. The court is authorized to enter judgment regardless of whether the settlement's obligations were performed or excused, even after dismissal. (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1184-1185.) "In order to take advantage of the statute's expedited procedure, a party must first establish the agreement at issue was set forth 'in a writing

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<sup>1</sup> Unless otherwise noted, all further statutory references are to the Code of Civil Procedure.

signed by the parties’ [citation] or was made orally before the court.” (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 304.) When the settlement agreement and dismissal reserve authority for the trial court to determine the prevailing party and award costs, the court has jurisdiction to award such costs and fees. (*Khavarian Enterprises, Inc. v. Commline, Inc.* (2013) 216 Cal.App.4th 310, 320.)

On the merits, the requirements of section 664.6 have been satisfied. The parties agreed to the expedited procedure, and the court agreed to retain jurisdiction in a February 1, 2024, order. (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 439.) The request was made in writing, during the pendency of the case, and signed by the parties. (*Mesa RHF Partners, L.P. v. City of Los Angeles* (2019) 33 Cal.App.5th 913.) The stipulation was filed with the court before the case was dismissed. (*Ibid.*) The parties agreed that the court should retain jurisdiction during litigation in a signed written settlement agreement, which was filed and signed by the court prior to dismissal. The court agreed to retain jurisdiction, empowering it to vacate dismissal and enter judgment.

The court will vacate dismissal, and enter judgment in the amount of the principal debt of \$2,488.96.

As for costs that total \$610.20, the “Stipulated Agreement” contemplated that plaintiff may seek fees and costs upon default, and it appears the costs requested are those authorized by the agreement, and they appear reasonable. Nevertheless, the court has one concern that it directs counsel to address at the hearing. A party seeking costs should file a verified “Memorandum of Costs” on standard Judicial council forms. Plaintiff here simply included the request in Paragraph 7 of counsel’s declaration, without explanation, supported by a business printout from an electronic ledger, without explanation. There is good reason why case law requires a verified “Memorandum of Costs” printed on standard Judicial Council forms as the vehicle to seek costs. As noted in *Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, “a verified memoranda of costs is prima facie evidence of the propriety” of the items on it, and the burden is on the party challenging the costs to demonstrate that they are not reasonable or necessary. (*Id.* at p. 1486.) This is the required vehicle by California Rules of Court, rule 3.1700, and cases are clear on this point. (See *612 South LLC v. Laconic Limited Partnership* (2010) 184 Cal.App.4th 1270, 1285 [a “verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary”]; *Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131 [“ ‘[i]f the items appear to be proper charges, the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party]’ ”].)

The court directs plaintiff’s counsel to appear at the hearing by Zoom or in person in order to explain why a “Memorandum of Costs“ was not submitted. The court expects counsel to

explain the nature of the costs under oath. If the explanations offered are reasonable, the court will award costs of \$610.20, sign the proposed order, and sign the proposed judgment.